

**CENTER FOR BIOLOGICAL DIVERSITY  
SOUTHEAST ALASKA CONSERVATION COUNCIL  
EARTHJUSTICE ♦ WOMEN'S EARTH AND CLIMATE ACTION NETWORK  
AUDUBON ALASKA ♦ THE WILDERNESS SOCIETY  
ALASKA WILDERNESS LEAGUE ♦ GEOS INSTITUTE**

March 24, 2020

Paul Ray, Administrator  
Office of Information and Regulatory Affairs, Office of Management and Budget  
Eisenhower Executive Office Building  
1650 Pennsylvania Ave., NW, Room 262  
Washington, DC 20503  
Email: Paul\_Ray@omb.eop.gov; OIRA\_submission@omb.eop.gov

**Re: Request that OIRA Return the Proposed Amendment to the Roadless Rule in Alaska to USDA for Reconsideration and conduct a valid Regulatory Impact Analysis and Cost Benefit Analysis pursuant to E.O. 12866 and E.O. 13563**

Dear Administrator Ray:

On October 17 2019, the USDA issued a draft rulemaking, RIN 0596–AD37, to open roadless areas in Alaska to road construction and commercial logging.<sup>1</sup> Pursuant to E.O. 12866, rulemakings that meet the test for a significant regulatory action require that the agency proposing the rule conduct a Regulatory Impact Analysis. Regarding such analyses, E.O. 12866 states, “In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.”<sup>2</sup> The USDA published the Alaska Roadless Rulemaking Regulatory Impact Assessment and Cost-Benefit Assessment (RIA) on October 21, 2019. In the RIA, the agency concluded that the annual effect on the U.S. economy would be less than \$100 million, a threshold set by E.O. 12866 for determining whether a proposed rule is economically significant.

Although the Office of Information and Regulatory Affairs (OIRA) concluded on October 10, 2019 that the proposed Alaska Roadless Rule was not an economically significant regulatory action, an independent analysis by the Conservation Economics Institute shows that USDA's RIA is flawed and should not be used as a basis for the economically significant determination by OIRA. A complete analysis of the costs and benefits of the proposed rule would show that the annual effect on the economy will exceed \$100 million and will affect the environment and local and tribal governments and communities in a material way.<sup>3</sup> We therefore ask OIRA to return the final proposed rule to the USDA for reconsideration, and completion of a valid regulatory impact analysis and cost benefit analysis (CBA) as required by E.O. 12866.<sup>4</sup>

The enclosed review of the RIA by forest economist, Evan Hjerpe, Ph.D. of the Conservation Economics Institute, was submitted as a comment letter on the proposed Alaska Roadless

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<sup>1</sup> 84 Federal Register 55522 (October 17, 2019).

<sup>2</sup> Executive Order 12866, § 1(a) (Oct. 4, 1993).

<sup>3</sup> E.O. 12866, § 3(f)(1).

<sup>4</sup> E.O. 12866, § 6(b)(3) (providing that OIRA may “return” a regulatory action “to an agency for further consideration”).

Rulemaking on December 16, 2019.<sup>5</sup> Dr. Hjerpe's review raises serious and valid concerns with the accuracy of the USDA's RIA that warrant consideration by OIRA. His analysis demonstrates that virtually all of the USDA's economic claims -- including that the benefits will outweigh costs, that there will be virtually no adverse economic effects, and that the Alaska Roadless Rule will not have an annual economic effect on the U.S. economy of greater than \$100 million -- lack foundation in sound economic analysis.

Following are the five most problematic issues highlighted in Dr. Hjerpe's review that call into question the credibility of the USDA's assessment and whether it has truly answered this key economic question.

1. The USDA's analysis of distributional effects fails to support the rule's purpose and need, which is to "adjust" Roadless Rule prohibitions on timber harvesting to emphasize rural economic development opportunities, as requested in the State of Alaska's petition.<sup>6</sup> Instead, the distributional effects analysis demonstrates that there will be zero new jobs created by the rule.<sup>7</sup>
2. The USDA has failed to quantify numerous categories of costs and the differences in those costs across the regulatory alternatives in both the CBA and the Regulatory Costs section. Most significantly, agency costs are not quantified. Even a casual observer would understand that logging in Roadless forests will require greater USFS roading, road decommissioning, and road maintenance costs than the status quo.<sup>8</sup> In addition, logging in roadless areas will impact subsistence users. Subsistence foods replace purchased foods, therefore there is a cost associated with subsistence losses. In addition, non-quantifiable costs including social and cultural losses from reduced hunting and gathering opportunities on traditional lands impacted by logging in former roadless areas should also be discussed qualitatively. These impacts were not analyzed for each of the alternatives.<sup>9</sup>

The RIA also failed to consider opportunity costs in the cost benefit analysis, such as the one-time cost of \$24,750,000 resulting from the loss of conservation values, such as ecosystem services, and both use and non-use values that will occur by removing roadless protections. Use values include recreation benefits and water quality benefits for human uses and for supporting salmon fisheries. Passive use values include option, bequest, and existence values held for Tongass roadless areas.<sup>10</sup> The potential carbon market value of the Tongass inventoried roadless areas was estimated by Drs. DellaSala and Buma at \$232 million to \$2.2 billion, but this also was not factored into the analysis.<sup>11</sup> Further, the RIA did not assess the annual cost or value impacts of USFS restoration service contracts and

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<sup>5</sup> Hjerpe, E. 2019. Alaska Roadless Rule Draft Environmental Impact Statement (DEIS) Review of Economics.

<sup>6</sup> 84 Fed. Reg. 55522, 55523 (Oct. 17, 2019); *see also* State of Alaska. 2018. Petition for USDA rulemaking to exempt the Tongass National Forest from application of the Roadless Rule and other actions. *Available at:* [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4406959.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4406959.pdf), and attached.

<sup>7</sup> USDA 2019. Alaska Roadless Rulemaking DEIS at 1-4: Purpose and Need: "The USDA and Forest Service believe the 2001 Roadless Rule prohibitions on timber harvest and road construction/reconstruction can be adjusted for the Tongass in a manner that *meaningfully addresses local economic and development concerns and roadless area conservation needs* [emphasis added]."

<sup>8</sup> Hjerpe, E. 2019. at 21.

<sup>9</sup> Hjerpe, E. 2019. at 28.

<sup>10</sup> Hjerpe, E. 2019. at 19-21.

<sup>11</sup> D. DellaSala and B. Buma, Analysis of Carbon Storage in Roadless Areas of the Tongass National Forest (2019) (DellaSala and Buma 2019) *available at:* <http://nps.history.com/publications/usfs/region/10/tongass/carbon-2019.pdf>

administration on the Southeast economy nor how investments in recreation and restoration projects could have a beneficial impact on recreation and tourism job creation.<sup>12</sup>

3. The USDA's CBA does not accord with accepted economic theory and the net present value (NPV) calculations in the CBA are grossly inaccurate. First, the CBA quantifies only one cost and one benefit, and incorrectly incorporates distributional effects as costs and benefits.<sup>13</sup> Specifically, the RIA incorrectly assesses changes to costs for the tourism industry and timber industry harvest costs for each of the regulatory alternatives as costs and benefits. Such changes in costs that result from regulatory effects are classified as market changes. According to economic theory, market impacts are to be discussed as distributional effects, not in the CBA. Second, OMB requires that net benefits be calculated using discount rates of 3 percent and 7 percent.<sup>14</sup> However, the USDA assessed valuation using only one discount rate, which the agency does not identify. This contributes to an incorrect NPV estimated by the USDA that results in estimated harvest cost reductions of \$91 million over 20 years. If this were calculated correctly based on either a 3% or 7% discount rate as required by OMB, the actual estimate of harvest cost reductions would be much lower, \$30.8 million or \$21.9 million, respectively.<sup>15</sup>
4. USDA has failed to acknowledge that the current Tongass timber program loses \$25 million for every \$1 million in timber revenue. This absurd cost-benefit ratio will only get worse by shifting timber production into Roadless forests, where construction of new roads through virgin terrain adds to timber harvest costs, whether borne by the U.S. Forest Service directly, or indirectly as an added cost for timber sales.<sup>16</sup>
5. The USDA has failed to follow OMB guidance governing the content of an RIA. The RIA lacks "a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need."<sup>17</sup> The USDA fails to demonstrate that the "preferred option [has] the highest net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)"<sup>18</sup> Additionally, the RIA fails to provide a "reasoned determination" that the benefits of the regulatory action justify the costs.<sup>19</sup>

These and other issues raised in Dr. Hjerpe's analysis suggest that the USDA's RIA is so flawed that it is not possible to determine whether the proposed rule will have an annual effect in excess of \$100 million on the U.S. economy or not. Further, the RIA provides no indication that the benefits of this rulemaking would outweigh the costs. We therefore ask OIRA to return the final proposed rule to the USDA for reconsideration, and completion of a valid RIA as required by E.O. 12866.

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<sup>12</sup> Social and Economic Monitoring of the Tongass National Forest and Southeast Alaska communities: Monitoring Plan and Baseline Report. 2020. Ecosystem Workforce Program, University of Oregon. Available at: <http://ewp.uoregon.edu/TongassTransition>

<sup>13</sup> Hjerpe, E. 2019. at 14.

<sup>14</sup> OMB, Circular A-4, "Regulatory Impact Analysis: A Primer" available at: [https://reginfo.gov/public/jsp/Utilities/circular-a-4\\_regulatory-impact-analysis-a-primer.pdf](https://reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf).

<sup>15</sup> Hjerpe, E. 2019. at 14-21.

<sup>16</sup> Hjerpe, E. 2019. at 23.

<sup>17</sup> E.O. 12866; see also: OMB, "Agency Checklist: Regulatory Impact Analysis," available at: [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/inforeg/inforeg/regpol/RIA\\_Checklist.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/inforeg/inforeg/regpol/RIA_Checklist.pdf); see also: OMB, Circular A-4, "Regulatory Impact Analysis: A Primer."

<sup>18</sup> OMB, "Agency Checklist: Regulatory Impact Analysis,"; E.O. 12866, § 1(a).

<sup>19</sup> E.O. 13563, § 1(b) and E.O. 12866, § 6(a)(3)(C)(iii).

We also refer you to our April 12, 2019 letter to your office (enclosed) which outlines important factors in the Southeast Alaska economy with respect to tourism, fishing, recreation, guiding and subsistence and their reliance on the preservation of roadless areas in the Tongass National Forest, which we find were not adequately addressed in the RIA, if at all.

Thank you for our attention to this matter. We look forward to your reply. Feel free to reach Sally Schlichting at (907) 586-6942 or via email at [sally@seacc.org](mailto:sally@seacc.org), or Ted Zukoski at (303) 641-3149 or via email at [tzukoski@biologicaldiversity.org](mailto:tzukoski@biologicaldiversity.org).

Sincerely,



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Enclosures: 1) Alaska Roadless Rule Draft Environmental Impact Statement (DEIS) Review of Economics, Evan Hjerpe, Conservation Economics Institute, December 2019  
2) CBD, SEACC, AWL Letter to OIRA re: Alaska Roadless Rule, April 2019  
3) State of Alaska Petition for USDA rulemaking to exempt the Tongass National Forest from application of the Roadless Rule and other actions, January 2018

cc: Richard Theroux, Branch Chief, Natural Resources and Environment Branch, OIRA  
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*Conservation  
Economics  
Institute*

## Tongass Roadless Rule DEIS Economic Review

December 16, 2019

Alaska Roadless Rule,  
USDA Forest Service, Alaska Region  
Ecosystem Planning and Budget Staff,  
P.O. Box 21628, Juneau, Alaska 99802– 1628.

FROM: Evan Hjerpe, Ph.D., Forest Economist

RE: Alaska Roadless Rule Draft Environmental Impact Statement (DEIS) Review of Economics

To whom it concerns,

I am submitting the following economic comments on the Tongass Roadless Rule DEIS. I am a forest economist with over a decade of professional experience researching the economic values of forest management in the U.S. and internationally. I have a Ph.D. in forest management and economics from Northern Arizona University. I spent five years working in the Tongass National Forest, researching economic forestry solutions that benefited southeast Alaskan communities. With the Draft Environmental Impact Statement (DEIS) to exempt the Tongass National Forest from the Roadless Rule, I am compelled to illustrate the shortfalls in economic analysis contained in the DEIS. My experience in forest economics and on the Tongass makes me highly qualified for reviewing the economic components of the DEIS.

In these comments, I detail how all economic valuations and trends associated with Tongass timber production and roadless protections clearly indicate that both national and Southeast Alaskan residents will incur greater benefits by keeping the Roadless Rule in place in Alaska. In fact, removing roadless protections from the Tongass will result in tremendous costs and damages to other economic sectors, national taxpayers, ecosystem services, and biodiversity. Because of the obvious economic perils and government waste that would result from removing Tongass roadless protections, the only reasonable alternative is the No Action alternative.

The Tongass Roadless Rule DEIS, released on October 17, 2019, is lacking credible economic analysis and falls well short of appropriate NEPA economic requirements. In the DEIS, USDA has ignored the best available economic science, which clearly illustrates that from almost every economic angle, the U.S. and southeast Alaskans are better off keeping the Roadless Rule intact. Not only has USDA ignored the best available science, they also did not provide any economic analysis to show how exempting the Roadless Rule on the Tongass would help Alaska or the nation. The disregard for incorporating the best available science, combined with providing no supporting economic analysis, undermines the validity of

appropriate NEPA analysis. These economic issues were flagged in detailed scoping comments,<sup>1</sup> yet were not addressed in the DEIS.

The overarching economic theme presented in the DEIS is that Tongass roadless timber production can occur in a vacuum without damaging the primary economic drivers of the region or the ecological integrity of the Tongass, and without additional costs to the agency. This is perhaps the biggest flaw of the NEPA analysis and illustrates a poor understanding of real-world economics. With numerous deficiencies, USDA's economic analysis in the DEIS does not accord with economic theory and does not meet the acceptable standard for economic analysis on public lands as mandated by NEPA, the NFMA, and appropriate forest planning. With such a paucity of credible economic analysis, this DEIS and its management direction, is fatally flawed and must be withdrawn.

The major deficiencies regarding economics in the DEIS include:

- USDA did not validate the State of Alaska's claims of economic harm from the Roadless Rule, which are meritless and unsupported.
- USDA's purpose and need are irrational, and they have provided no logical rationale, economic or otherwise, to justify the proposed rule.
- USDA's distributional effects analysis shows the proposed rule will result in zero increases in regional employment, output, or income. USDA has thus verified that there is no logical rationale for the proposed rule, as the entire rationale is predicated on providing further economic development to Southeast Alaska.
- The Cost-Benefit Assessment required for this rulemaking is does not pass scientific or legal muster and does not accord with standard economic theory.
- USDA included timber harvesting costs in Tongass IRAs that are erroneously projected to decrease under the proposed rule, but inexplicably did not include any increased road construction, decommissioning, or maintenance costs.
- In the Cost-Benefit assessment, USDA has mistaken distributional effects of changes in industry revenues for costs and benefits to be used in economic efficiency analysis.
- USDA has not quantified any costs or benefits to the US Forest Service (USFS) or society at large, despite numerous cost increases that will result from the proposed rule.
- USDA's net present valuation (NPV) of costs and benefits appears to be wildly inaccurate.
- USDA has provided almost no supporting economic data to support their claims of harvest cost savings, nor any supporting engineering or economic analysis to project road needs and costs for timber production in Tongass IRAs.
- USDA has omitted most of the Tongass economics literature illustrating the severe economic inefficiency of Tongass timber production and peer-reviewed research illustrating conservation benefits for protecting Tongass old growth.
- When including increased road costs and lost conservation benefits, credible cost-benefit analysis illustrates that the proposed rule will result in losses ranging from \$26 million to \$48 million, at a minimum.
- USDA has not included synthesized economic research showing that the Tongass timber program has an average cost-benefit ratio of 25. That is, for every \$1 million received by the

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<sup>1</sup> See Tongass Roadless Rule scoping comments submitted by Dr. Evan Hjerpe on 10/15/18.

U.S. Treasury for stumpage fees, U.S. taxpayers pay \$25 million in federal agency costs to subsidize timber harvests.

- In the Agency and Regulatory Costs section, USDA has failed to quantify a single cost to the agency, despite many costs to choose from for analysis.
- USDA did not provide an ecosystem services perspective of the proposed rule, despite its current prominence as the USFS's dominant management paradigm.

## 1. Introduction

The Tongass National Forest (hereafter, the Tongass) is renowned for its pristine old growth rainforests. Tongass roadless forests provide the iconic backdrop to numerous cruise ships that show tourists the Inside Passage. Tongass roadless forests also provide habitat for spawning salmon and directly support one of the biggest economic drivers in the region---commercial fishing. By providing the economic goods and services required to produce the primary regional economic activities of tourism, commercial and sport fishing, and subsistence, Tongass roadless forests are critical to the provision of widespread economic benefits and impacts to Southeast Alaska. Nationally, Tongass roadless forests are also a major source of economic benefit through carbon sequestration and by providing immense passive use value in the form of option, bequest, and existence values held for scarce and pristine coastal temperate old growth rainforests.

Opening Tongass roadless areas to development will result in tremendous economic losses for the American public and residents of Southeast Alaska. Removing roadless protections in the Tongass is certainly NOT in the best interest of Alaskan residents, nor is it in the best interest of national residents. Jeopardizing such valuable landscapes with irreversible environmental damages is extremely short-sighted and will result in damages to every industry except the timber industry. Exempting the Tongass from the Roadless Rule will also perpetuate a corporate welfare program where taxpayers are forced to subsidize a damaging industry to the tune of \$30 million a year. The proposed Rule in the DEIS is both fiscally and ecologically irresponsible.

Inventoried Roadless Areas (IRAs) recognized by the 2001 Roadless Rule provide for numerous economic benefits and impacts to adjacent communities and the nation. By keeping roadless areas undeveloped, nature is allowed to provide high quality ecosystem services, or benefits to mankind. The most notable and obvious ecosystem services protected by the Roadless Rule center on water quality and supply, biodiversity, and carbon storage. Roadless forests in the U.S. contain many headwaters, pristine forests, and critical fish and wildlife habitat. While the majority of ecosystem services produced by roadless forests are not traded in financial markets, there are non-timber forest products such as mushrooms, berries, firewood, and wild game and fish that are marketed or act as monetary supplements for grocery budgets. This is especially true of economies that include a high rate of subsistence activities such as Southeast Alaska.

Much like Wilderness areas and other protected lands, roadless forests are a critical component of our national conservation lands. This reserve of conservation lands is akin to a bank account of nature that continually collects interest and becomes more valuable into the future. Natural areas are rapidly diminishing world-wide and in the U.S. As natural landscapes, and their associated natural disturbance

regimes, continue to shrink and scarcity increases, remaining natural areas increase in value.<sup>2</sup> These natural areas hold tremendous option value for the future, including potential medicinal cures, refuge for climate change-affected species, and chemical compounds for agriculture and manufacturing. Eliminating the protection for roadless areas could eliminate future options associated with these natural areas.

Nationally, roadless areas are important for regional economic benefits and impacts. Recent research<sup>3</sup> illustrated the overall economic value of Lower 48 roadless areas. Results show over 11 million annual visits to roadless areas in the Lower 48, that provided for \$500 million of economic benefit, or personal value to recreationists, and millions of dollars in regional economic impact from outdoor recreationists who purchase goods and services in the small towns adjacent to roadless areas. Roadless areas are also highly regarded for their passive use values such as existence, option, and bequest values, estimated at \$8 billion annually in the continental U.S.<sup>4</sup>

A major reason for implementing the original Roadless Rule was to help prevent wasteful government spending, saying that, “budget constraints prevent the Forest Service from adequately maintaining the existing road system.”<sup>5</sup> The original Roadless Rule also indicated that a national rule was necessary because the Forest Service has “the responsibility to consider the ‘whole picture’ regarding the management of the National Forest System, including inventoried roadless areas” and “[l]ocal land management planning efforts may not always recognize the national significance of inventoried roadless areas and the values they represent in an increasingly developed landscape.”<sup>6</sup>

This is very true of the Tongass, where local land management has failed to recognize, or account for, the national significance of Tongass roadless areas and has shown disregard for the “whole picture” as related to total economic benefits provided. Likewise, Alaska has a \$68 million Forest Service road maintenance backlog; nationally the USFS road maintenance backlog is estimated at \$3.2 billion.<sup>7</sup> With such an extensive backlog of road needs, why is USDA attempting to increase this deficit? Where is the collective national taxpayer voice in this process?

Given that roadless areas are important for wildlife, water quality, and recreation, there is a tremendous need to have the economic values of roadless areas on the Tongass and elsewhere documented in the public record during the NEPA process. There are over nine million acres of IRAs in the Tongass. These roadless areas gained protection under the 2001 Roadless Rule but would be exempted and opened up for extractive development under the proposed rule. Opening Tongass roadless areas to timber harvest will result in significant environmental consequences---effects that must be, but are not, disclosed in the DEIS.

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<sup>2</sup> Holmes, T. P., Bowker, J. M., Englin, J., Hjerpe, E., Loomis, J. B., Phillips, S., & Richardson, R. (2015). A synthesis of the economic values of wilderness. *Journal of Forestry*, 114(3), 320-328.

<sup>3</sup> Hjerpe, E. and G. Aldrich. 2018. Economic values and contributions of roadless areas. A Conservation Economics Institute Report. 25p. Available at:

[https://www.researchgate.net/publication/336444790\\_Economic\\_Values\\_and\\_Contributions\\_of\\_Roadless\\_Areas](https://www.researchgate.net/publication/336444790_Economic_Values_and_Contributions_of_Roadless_Areas)

<sup>4</sup> *Ibid.*

<sup>5</sup> 36 C.F.R. §§ 294 (2001), Federal Register pp. 3245-3246.

<sup>6</sup> *Ibid.*

<sup>7</sup> USFS responses to Rep. Mike Quigley.

The best way to visualize the economic value of roadless forests is to examine landscapes that have been developed for timber production or mining. That is, what will be lost when roadless forests lose their protection? What is the economic cost associated with land degradation and pollution? These are the costs that need to be clearly assessed in the EIS process but are lacking in the DEIS. What are the benefits of keeping roadless protections, such as avoided costs of pollution and resource damages? A full assessment of the trade-offs associated with this rulemaking needs to be clearly delineated. The current DEIS is insufficient and must be withdrawn and redone.

## 2. There is No Purpose and Need for a Tongass Roadless Exemption

USDA and the State of Alaska have not come up with any rational purpose and need for a new rulemaking process. Throughout the DEIS, USDA indicates that the impetus for this rulemaking comes from a petition from the State of Alaska. The State of Alaska (SOA)'s petition (DEIS: Appendix A) to USDA for this rulemaking claims the 2001 Roadless Rule has resulted in "extensive damage... to the economic and social fabric of Southeast Alaska..." The Petition also states that a roadless exemption is needed for the socioeconomic well-being of Tongass residents. However, the State of Alaska provides zero evidence of economic damages coming from the 2001 Roadless Rule, and zero evidence that exempting the Tongass from the Roadless Rule will improve the socioeconomic well-being of Tongass residents. In fact, there is overwhelming economic evidence to the contrary. USDA apparently did not verify the economic rationale from the State's petition, nor did they provide any logical economic reasoning for the preferred alternative in the DEIS. In lieu of evidence-based research from the State of Alaska or USDA, I will first illustrate why the purpose and need for this rulemaking are faulty and then provide economic explanations of the trade-offs associated with exempting the Tongass from the Roadless Rule.

### 2.1 The Rationale from the State of Alaska's Petition is Inaccurate

The rationale throughout SOA's petition is crystal clear: they are asking the USDA "...to support a diverse and robust forest products sector in Southeast Alaska." It is also crystal clear that the SOA wants a forest products sector based strictly on clearcutting old growth forests. Not only does the SOA's petition request USDA to revise the Roadless Rule on the Tongass, it also requests that USDA revise the 2016 TLMP Amendment *and* revise the established transition from old growth to young growth harvests (DEIS: A-4).

The SOA's petition suggests that the Tongass Roadless Rule is an unnecessary protective policy layer, stating that these roadless areas would be protected with or without the Roadless Rule. Not as clearly stated, but deduced by the content of the entire petition, is that the SOA is seeking access and funding to harvest the most accessible and productive old growth stands currently protected by the Roadless Rule---the 165,000 acres of old growth that the preferred Alternative (6) in the DEIS would convert from unsuitable for timber production to suitable. Is the Tongass Roadless Rule unnecessary and duplicative? No--- especially not for the most accessible and productive old growth, areas with some of the greatest ecosystem service production, that would be on the chopping block.

The SOA claims of economic harm from the Roadless Rule are meritless, as are their claims that regional economic and timber industry conditions are the same as 2003. The SOA petitions states:

“Addressing the serious socioeconomic consequences to Alaskans and complying with ANILCA and TTRA are all compelling rationale for a Tongass Exemption today, as they were in 2003....The State respectfully submits this petition for a rulemaking to exempt the Tongass from the Roadless Rule in the interest of the socioeconomic well-being of its residents.” (DEIS: A7-A8).

These “serious socioeconomic consequences” of the Roadless Rule are never specified. How exempting the Tongass from the Roadless Rule will be in the best “interest of the socioeconomic well-being of its residents” is never detailed. Despite an overwhelming lack of evidence to back up these claims, USDA rests its entire purpose and need on the SOA’s petition. Additionally, economic conditions in Southeast Alaska have changed substantially since 2003. TTRA “market demand” is down to 46 million board feet and Asian export markets are waning due to tariff and trade war effects. Mill capacity is a fraction of that in 2003 and the transition to Tongass second growth has commenced. Regional Tongass timber employment currently represents less than one percent of regional employment.<sup>8</sup> The two largest private industrial sectors in Southeast Alaska are tourism and commercial fisheries, making up about 15% and 10% of regional private employment respectively.<sup>9</sup> These two industries, tourism and seafood production, are the real drivers of the regional economy and are directly dependent upon the protected roadless forests of the Tongass. The economics question is, why would the federal government remove roadless protections to boost a dying industry (i.e., logging) while irreversibly damaging the natural resources that the rest of the regional economy depends on?

The SOA claims that a Tongass exemption from the Roadless Rule is needed for economic development (i.e, clearcutting old growth), but has provided zero economic evidence for this need, nor any details of how societal benefits would outweigh the costs of development. In summary, the only purpose or need for this rulemaking is to direct greater federal tax dollars to build roads to clearcut old growth forests in Southeast Alaska. This is illogical from almost all perspectives and is an insufficient purpose and need for such a damaging rulemaking.

## 2.2 The DEIS Purpose and Need is Irrational

Likewise, the Forest Service makes bold claims about supposed economic benefits of the proposed rule:

“The proposed rule is expected to yield a range of benefits (or cost reductions) derived from greater flexibility and a positive net benefit (USDA Forest Service 2019b) and economic opportunities for small business. For example, greater flexibility is provided for the selection of future timber sale areas and sale design (depending on the planning areas selected); and could, in turn, potentially improve the Forest Service’s ability to offer economic sales that meet the needs of industry.” (RIA: 26)

Upon closer examination, only one benefit has been illustrated---cost reduction in felling, yarding, and loading harvest costs. As shown below, this is not a benefit nor is it accurately calculated. There simply is no positive net benefit from the proposed rule. The citation provided to supposedly show positive net benefit contains no document that illustrates increased net benefit. To provide a useless citation as the source for demonstrating improved economics from the rulemaking is suspect and indicates that there

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<sup>8</sup> Alexander, B. and R. Gorte. 2014. The Tongass National Forest and the Transition Framework: A New Path Forward? Bozeman, MT: Headwaters Economics, 32p.

<sup>9</sup> *Ibid.*

are actually no positive benefits to report. Finally, the only effects on small businesses demonstrated in the DEIS are adverse effects on small tourism guides and outfitters.

The real purpose and need given in the DEIS is that:

“The USDA and Forest Service believe the 2001 Roadless Rule prohibitions on timber harvest and road construction/reconstruction can be adjusted for the Tongass in a manner that meaningfully addresses local economic and development concerns and roadless area conservation needs.” (DEIS: ES-2).

While this might be a noble intention, the DEIS tells us that neither economic development concerns, nor roadless area conservation needs, will be meaningfully addressed. In the DEIS, it is estimated that there will be no changes in regional employment and no changes in overall timber production. The proposed rule would eliminate all Roadless protections from 9.2 million acres; this certainly does not address roadless conservation needs. How exactly does the preferred rule help the regional economy or address roadless area conservation needs?

We know that timber harvest and road construction miles in Tongass roadless areas will be greater than zero. Otherwise, there is no purpose for this rulemaking. “Alternative 6 is the preferred alternative and provides maximum additional timber harvest opportunity as the full exemption alternative, which was requested by the State of Alaska’s petition.” (DEIS: 2-16) We also know that a single mile of constructed roads, and a single acre of clearcut old growth, has adverse environmental consequences on water quality, wildlife habitat, fish, deer, and carbon storage. We know that timber harvests in roadless areas will require more road construction than harvests in the roaded timber base. We know a mile of new roads costs substantial amounts of taxpayer dollars, as does road decommissioning. We know that U.S. taxpayers subsidize timber production on the Tongass at a rate from approximately \$500--\$1,100 per thousand board feet of timber.<sup>10</sup> These average costs, benefits, and damages are not disclosed in the DEIS. USDA must, at a minimum, cite this information and ultimately this requires major revisions to the DEIS.

Preferably, these quantified economic and ecological values should be incorporated into sensitivity analysis that illustrates overall average costs for anticipated small, medium, and large incursions into Tongass roadless areas (e.g., see section 4.2 later in this document). This is not difficult and would be much more reasonable than acting as if the preferred alternative will have zero repercussions on the ground. If nothing will happen from this rulemaking, there is no need for it. Providing rough averages and details of obvious implications of the various alternatives is required by NEPA. That the DEIS simply ignores critical environmental consequences is a fatal flaw rendering the DEIS unusable. A new DEIS must be conducted to account for these fatal flaws.

### 3. The Economic Reality Ignored in the DEIS

USDA is hitching their horse to old growth timber harvesting on the Tongass, which is about as economically and environmentally prudent as subsidizing antiquated extractive industries like coal

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<sup>10</sup> Alexander, B. and R. Gorte. 2014. The Tongass National Forest and the Transition Framework: A New Path Forward? Bozeman, MT: Headwaters Economics, 32p.

mining. With excessive subsidies already required for any Tongass timber production, opening Tongass roadless areas to timber development will only increase total subsidies. Exempting the Tongass from the Roadless Rule will also cause economic harm to Southeast Alaska residents by threatening tourism, commercial fishing, sport fishing, and subsistence economies. Corporate welfare provided to the timber industry comes at the costs to southeast Alaskan residents, Alaskan residents, and U.S. residents. USDA must incorporate the best available science to come to a decision in this rulemaking process. If the rulemaking process is actually bound by NEPA guidelines, utilizes the best available science, and maintains integrity owed to the public, the obvious conclusion would have been selecting the no-action alternative as the preferred alternative.

### 3.1 Economic Trends of Tongass Timber Production Will Not be Reversed by Opening Tongass Roadless Areas for Development

Large-scale timber production in Alaska has never been sustainable, nor has it ever been profitable. In total, U.S. taxpayers have paid billions of dollars to fund Tongass old growth logging. Southeast Alaska has suffered from the resource curse, where communities propped up by subsidized resource extraction, are left worse off after the experiment ends. The jobs were never sustainable, and the remaining residents are stuck with heavily damaged forests and watersheds from logging. The Tongass has always been a “last in, first out” supplier of wood due to exorbitant production costs, extreme isolation from markets, and a lower quality of wood.<sup>11</sup> These multiple factors make it impossible to have large-scale industrial timber production on the Tongass *without* massive taxpayer subsidies.

The Tongass is simply too remote and too mountainous to ever be profitable in large-scale timber production.<sup>12</sup> Most of the Tongass includes low-value trees, which has been exacerbated by a legacy of high-grading. The biggest and the best trees have already been cut. With extreme isolation and ruggedness, the Tongass has the highest logging and processing costs anywhere. Compared to British Columbia and the Pacific Northwest (PNW) region of the continental U.S., Southeast Alaska has the highest timber manufacturing costs and the lowest stumpage prices, with logging costs being 66% greater than in the PNW.<sup>13</sup>

While the Tongass has always been the most inefficient timber production region in the U.S, the absurdity of perpetuating Tongass old growth logging is that Tongass timber production is only getting more and more inefficient. Recent research<sup>14</sup> shows that for the last six years, Tongass timber expenses by the USFS are \$122.5 million while stumpage received, or revenue, is \$3.4 million. With costs exceeding benefits by 36 times, the Tongass timber program is an incredibly wasteful federal program.

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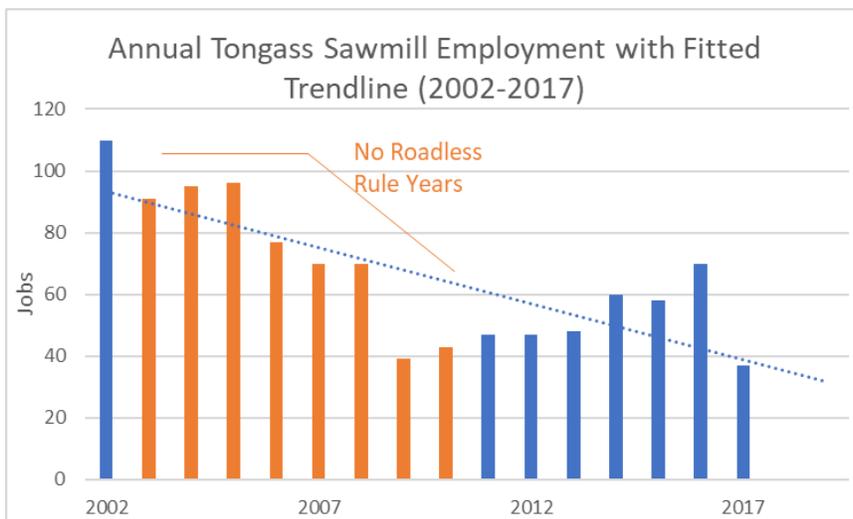
<sup>11</sup> Robertson, G. and D. Brooks. 2001. Assessment of the competitive position of the forest products sector in southeast Alaska, 1985–94. Gen. Tech. Rep. PNW-GTR-504. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 29 p.

<sup>12</sup> Crone, L. 2005. Southeast Alaska economics: A resource-abundant region competing in a global marketplace. *Landscape and urban planning* 72: 215-233.

<sup>13</sup> Robertson, G. and D. Brooks. 2001. Assessment of the competitive position of the forest products sector in southeast Alaska, 1985–94. Gen. Tech. Rep. PNW-GTR-504. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 29 p.

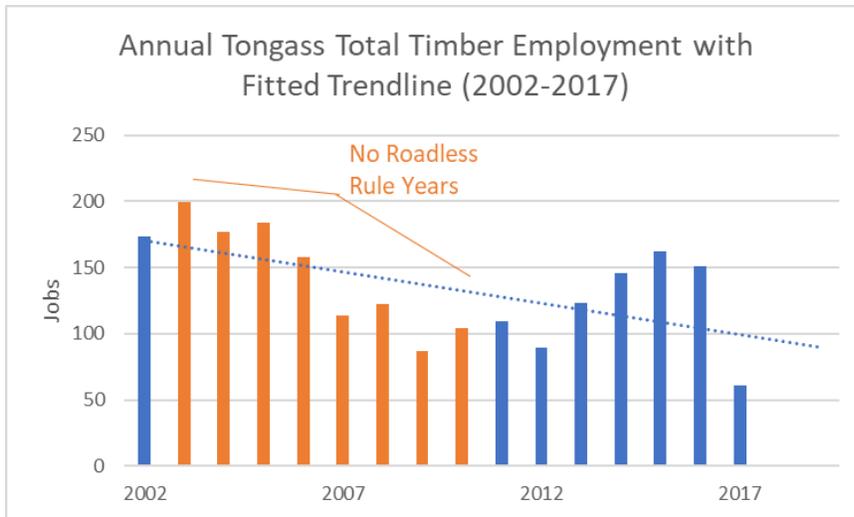
<sup>14</sup> Taxpayers for Common Sense. 2019. Cutting Our Losses: 20 Years of Money-Losing Timber Sales in the Tongass. Available at <https://www.taxpayer.net/wp-content/uploads/2019/09/TCS-Cutting-Our-Losses-2019-.pdf>

The inevitable decline in Tongass timber production is obvious. Employment from Tongass timber production currently sits at an all-time low of approximately 61 jobs. (DEIS: 3-28) The economic trends for timber production and jobs have been steadily decreasing since the closure of the region’s pulp mills for both Tongass NF associated production and the entire southeast Alaska region. Due to the exorbitant production costs, isolation from markets, and long-term high grading discussed above, a large-scale timber industry from Tongass production simply isn’t feasible. The economic trends will not be reversed by removing roadless protections, nor will it be overcome by subsidizing the industry \$30 million a year. A visual projection of Tongass timber jobs clearly illustrates the futility of wasting taxpayers’ dollars on corporate welfare.

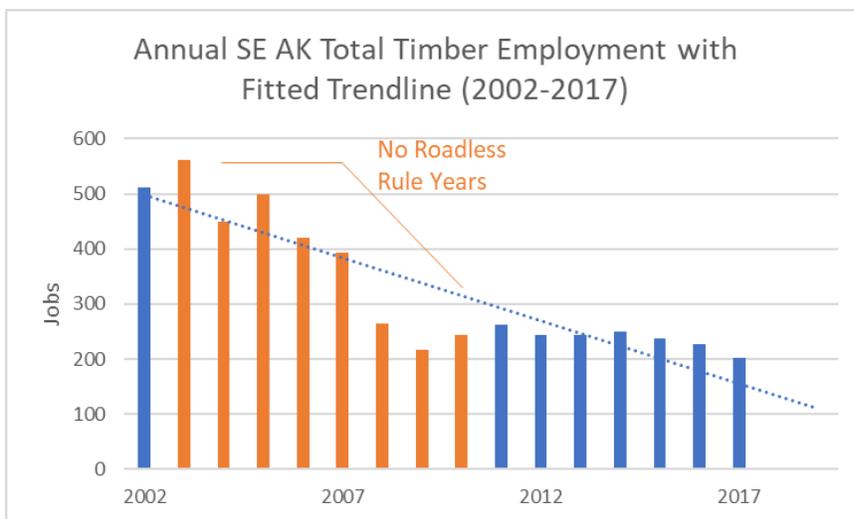


**Figure 1:** Source for employment data--DEIS Table 3.2-2: 3-28.

Figures 1, 2, and 3 show the steady decline of timber related employment in southeast Alaska and the Tongass. It is important to remember that the last 20 years included multiple Administrations, eight exempt years from the Roadless Rule, and consistent and heavy federal subsidization of logging roads and timber production. For the SOA to claim that the same economic rationale for exempting the Tongass from the Roadless Rule in 2003 exists today is blatantly ignoring all market evidence since then.



**Figure 2:** Source for employment data---DEIS Table 3.2-2: 3-28.



**Figure 3:** Source for employment data---DEIS Table 3.2-2: 3-28.

The timber industry and Alaska politicians hope that increasing federal timber supply on the Tongass will revive a shell of an industry. However, these hopes are unfounded. Wood supply has never been the problem for the lack of profitability for Tongass timber production. A 2004 legal decision (U.S. Federal Court of Claims, No, 95-153C, Alaska Pulp Corporation (APC) v. United States of America) showed that APC was unprofitable regardless of provisions associated with the Tongass Timber Reform Act (TTRA). Furthermore, recent Tongass timber sales demonstrate that wood supply is still not an issue. From 2000-2010, a period largely exempt from the Roadless Rule, nearly 50 % of Tongass timber sales offered were not bid on at all; of the timber that did sell, approximately 40 % of that supply was defaulted on by the

operators or mutually cancelled.<sup>15</sup> The most recent efforts to increase logging by subsidizing prohibitive road construction and timber sale planning costs are still proving to be impossible to overcome the severe lack of profitability. The North Kuiu timber sale has been offered in 2016 and again in 2018. Despite extreme subsidies attached to the timber sale, the sale has received zero bids.<sup>16</sup>

The clear trends indicate that markets and employment for Tongass timber are dying because industrial logging on the Tongass is just too expensive, with or without the Roadless Rule. How can USDA defend its purpose and need for expanding timber opportunities when all evidence shows that exempting the Roadless Rule will not be enough to overcome the dismal economics that characterize southeast Alaskan timber production? Where is the support for SOA's claims in their petition? Where is the scientific evidence in the DEIS? Why is the best available science regarding the lack of economic viability for Tongass timber excluded from the DEIS? This undermines the entire DEIS.

#### 4. The Regulatory Impact Assessment and Cost-Benefit Assessment are Not Credible and are Legally Inadequate

USDA has determined that this rulemaking is a significant rule, per the direction of Executive Orders 13563 and 12866. These orders require federal agencies to conduct a regulatory analysis for economically significant regulatory actions, or those that have an annual economic effect greater than \$100 million or adversely affect the economy or economic sectors. As USDA estimates the economic effects of the proposed rule to be less than \$100 million annually, the reasoning for determining this as a significant rule is due to anticipated adverse effects to the economy and individual economic sectors. Executive Orders 13563 and 12866 mandate cost-benefit analysis of significant rules and instructs the agency to choose regulatory approaches that "maximize net benefits." From the RIA:

"Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility." (RIA: 4)

Despite the noted importance of quantifying both costs and benefits, USDA has failed to quantify any real costs or benefits in the RIA. One cost and one benefit are quantified---savings in timber harvest costs (which are not really savings) and revenue losses for outfitters and guides. The purported savings in harvest costs are inaccurate and neither one of the costs are appropriate inputs for cost-benefit assessment and should have been included as distributional effects. In addition to inappropriate and inaccurate inputs, the actual calculations of the Net Present Valuation (NPV) appear to be wrong.

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<sup>15</sup> Hjerpe, E. 2011. Seeing the Tongass for the Trees: The Economics of Transitioning to Sustainable Forest Management. Washington: The Wilderness Society, 61p. Available at

[https://www.researchgate.net/publication/301553259\\_The\\_Economics\\_of\\_a\\_Tongass\\_Transition](https://www.researchgate.net/publication/301553259_The_Economics_of_a_Tongass_Transition)

<sup>16</sup> <https://www.juneauempire.com/news/controversial-timber-sale-cant-find-a-bidder/>

In this section, I illustrate the numerous shortfalls in the RIA. These shortfalls are fatal flaws for the entire DEIS, as the economic analysis contained in the RIA is the basis for the environmental consequences in the DEIS. After a review of the analysis included in the RIA, I provide a credible, economically rigorous cost-benefit assessment of the proposed rule that should be used in a revised DEIS. The results of the new CBA clearly show, with reasoned determination, that the benefits of the exempting the Tongass from the Roadless Rule are much less than the costs. That is, the preferred rule is clearly not in the best interest of the public. To meet legal standards for cost-benefit assessments for public lands, USDA must withdraw the net present valuation (NPV) presented in Table 6 (RIA: 35) and incorporate the credible CBA presented at the end of this section in a revised DEIS.

#### 4.1 The Cost-Benefit Assessment is Rudimentary and Wholly Inaccurate

Cost-benefit assessment is used to compare projected management scenarios such as the preferred Alternative to a baseline. In this case, the baseline is the no-action Alternative of keeping the Tongass Roadless Rule in place. The baseline comparison is similar to a with/without analysis. That is, what are the projected changes in costs and benefits if the preferred Alternative (6) is adopted?

Furthermore, it is important to understand the role of Executive Order 13463 and federal guidelines for cost-benefit assessment. Quantifying costs and benefits are emphasized, but if only a few costs and benefits can be quantified, it is still imperative to include “reasoned determination” that the benefits of regulatory actions justify the costs.... “Executive Order 13563 recognizes that a quantifiable analysis is not always possible, but must include a reasoned determination that the benefits justify the regulatory costs.” (RIA: 22)

The question being asked at the beginning of the RIA should be “do the benefits justify the costs?” Instead of starting with an open question and working to a reasoned determination, it appears as if USDA worked backwards from a pre-determined answer regarding costs and benefits. There is no other way to account for the errors and lack of economic rigor in the presented CBA. In no way does the RIA and CBA pass scientific or legal muster.

##### 4.1.1 *Timber Harvesting Costs Will Increase in Roadless Areas, Not Decrease*

Trendlines over time for three timber harvesting costs, out of many, are used to suggest that harvest costs will be reduced by exempting the Tongass from the Roadless Rule. This is the only quantified “benefit” in the CBA. In short, this estimate and the use of this estimate as the only quantified benefit in the CBA, does not constitute credible economic analysis.

For starters, the harvesting costs isolated (felling, yarding, and loading) are just three components of a number of total timber harvest costs and have little meaning when presented in isolation, or cherry picked as done in the DEIS and the RIA. USDA openly admits that the harvest costs presented in the CBA are one set of many harvest costs. For example:

“In practice, many factors can influence the cost of timber harvest, adding economic risks for potential purchasers and affecting the ability of the Forest Service to offer timber sales. Road construction, helicopter yarding, complex silvicultural prescriptions, setting size, and other factors may increase costs, which then decrease the value of the offering.” (RIA: 29).

How the USDA doesn't also include road construction, road decommissioning, and road maintenance costs in this CBA is bewildering, especially as they admit that timber road costs will increase in roadless

areas. Furthermore, road construction for timber sales are a cost to the USFS and the public taxpayer<sup>17</sup> whereas felling, yarding, and loading are typically costs covered by timber sale purchasers. USDA has extensive data on the need for more roads per unit of wood harvest in roadless areas, as well as extensive data on road costs. Why were these not included? Why were just a few harvesting costs cherry-picked?

Additionally, the point estimate of reduced harvest costs has no data to back it up and ultimately has nothing to do with the Roadless Rule. Changes in harvesting cost will not be the result of efficiency gains. The USDA's cost-benefit assessment (Table 6, RIA: 35) presents supposed reductions in harvest costs to the timber industry as benefits by comparing timber data for the eight years of the Roadless Rule exemption (2003-2010) to the eight most recent years with the Roadless Rule in place (2011-2018). A simple comparison of the years with and without the Roadless Rule is completely arbitrary and USDA has not made any case on why harvesting costs would change with and without the Roadless Rule.

Science involves developing a hypothesis first, then testing it. But USDA has provided no logical explanation of why harvest costs would be reduced in roadless areas---because they will not be reduced. Tongass timber harvesting costs have been continually increasing for decades, as high grading forces every subsequent timber sale farther up the watershed and towards less valuable wood (greater defect and smaller trees) and less accessible wood (i.e., steeper slopes). While shifting 165,000 acres of Roadless old growth to the suitable timber base may open a few low-elevation, high-volume stands for harvest,<sup>18</sup> overall harvest costs throughout roadless areas will increase due to increased road construction. Felling, yarding, and loading harvest costs are also likely to increase, rather than decrease, when estimating harvest costs across the entire 165,000 acres of old growth---as opposed to just estimating felling, yarding, and loading costs on the most productive 18,000 acres.<sup>19</sup>

Ultimately, USDA has confused the results of a short-term comparison of all timber sales for years before and after the Roadless Rule was back in place (2011), with efficiencies in harvesting costs due to Roadless designation. This is a critical error that undermines the entire CBA. USDA needs to withdraw the current DEIS and revise it to include long-term harvest cost trends dating back to at least the 1980s and adjusted for inflation. Long term harvesting cost trends would likely show continual increases in harvestings costs over time. USDA must also include full engineering and linear programming (e.g. Woodstock model analysis) reports estimating road construction needs, road costs, and other harvesting costs for Roadless old growth forests shifted to the suitable timber base.

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<sup>17</sup> Road construction needed for Tongass timber harvests are fully subsidized by the USFS. When timber sale appraisals are negative, the USFS will tend to pre-road to help sell the timber. Tongass timber managers are directed to reclassify roads as Public Works when dealing with negatively appraised sales (e.g., see R10 Timber Appraisal direction documents). In other sales, the USFS will give purchaser road credits to timber sale purchasers for the estimated cost of road construction. These purchaser road credits are then used for stumpage fee reductions on that sale or other future timber sales, resulting in losses in stumpage revenue to the U.S. Treasury and full subsidization of timber roads by U.S. taxpayers. The budget line item CMRD (Roads Capital Improvements and Maintenance) is used to pay for timber roads and averaged 50% of overall timber budgets from 2001-2008 and 40% of overall timber budgets from 1999-2018.

<sup>18</sup> USDA estimates that only 59,000 acres of the proposed 165,000 acres of Roadless old growth are high-volume.

<sup>19</sup> USDA claims that the projected harvest on the 165,000 acres of Roadless timber for the preferred alternative (6) will only be 18,000 acres over 100 years (DEIS: 3-19). If this is the case, there is no reason to choose Alternative 6 as the preferred alternative. If converting 165,000 acres of Roadless old growth to suitable for timber production, harvesting costs must be estimated for the potential harvest of all acres and must be presented in a revised DEIS.

#### *4.1.2 USDA Has Mistaken Distributional Effects for Costs and Benefits*

Another fatal flaw in the CBA is that USDA has only quantified a market impact to the timber industry and a market impact to the tourism industry, not a benefit or cost to the federal government or the public. That is, if there is a reduction of harvest costs (not likely), it will not save the federal government any money; rather, it will save the timber industry a few bucks. This also critically undermines the CBA.

At the beginning of the CBA, USDA states that:

“Benefits and costs are divided into two parts: 1) those which are realized by any organization or individual, and 2) those realized by the Forest Service. Financial considerations include revenues and costs from the perspective of the Forest Service or other government agencies.” (RIA: 22)

Upon review of the RIA, however, there are zero quantified costs and benefits presented for the Forest Service or for the taxpayer at large. Additionally, changes to timber industry harvest costs and costs to the tourism industry are not treated as benefits or costs to individuals or organizations when conducting economic efficiency analysis---they are market changes that are classified as distributional effects according to economic theory. Federal regulatory effects on public lands can have implications for specific industry sectors. While these should be examined, they should **not** be included in cost-benefit assessments. Market impacts are considered distributional effects by economists. Distributional effects do not go into the net present valuation (NPV) calculations---NPV is only for the CBA which is part of the “economic efficiency” analysis required in RIAs and DEISs. Some qualitative effects on individual regional industries are described in the Distributional Effects of the RIA (p. 39) where they belong. But using estimated distributional effects for the timber and tourism industries in the CBA is faulty economics and illustrates a lack of economic rigor in the DEIS and RIA.

The numerous footnotes associated with the damage estimates for the tourism industry in the DEIS and RIA help illustrate why industry effects are not considered as costs or benefits, but rather represent redistributions of wealth. This footnote in the RIA refers to the estimates of lost outfitter and guide revenues due to exempting the Tongass from the Roadless Rule:

“These estimates provide an upper-bound ceiling for consideration of potential lost revenue, alongside cost savings to the timber industry, and should not be used as precise estimates of roadless area visitor expenditures or losses. Expenses incurred by visitors are not necessarily lost but subject to displacement related changes. While some businesses may lose revenues, if visitors choose not to travel to Southeast Alaska, others may see increases in revenues if visitors choose to stay longer or travel to substitute sites within Southeast Alaska.” (RIA: 39)

“Displacement related changes” in markets is the very definition of distributional effects. The recreation industry losses are distributional effects, not a societal cost, even though they represent clear economic harm to the southeast Alaskan tourism industry. This is because visitors will spend their money elsewhere. Despite a lack of footnotes in the RIA explaining this same concept for the timber industry, it should be noted that decreases or increases in timber harvest costs paid for by timber companies are also distributional effects.

#### *4.1.3 Cost-Benefit and Net Present Valuation Calculations Make No Sense*

The poor economic analyses presented in the RIA is compounded by illogical Net Present Valuation (NPV) calculations and a lack of clarity. Table 6 in the RIA (p. 35) presents USDA’s final CBA as

represented by 20-year discounted NPV estimates. Table 6 is difficult to understand for a few reasons. First, costs attributed to the recreation/tourism industry need to be shown as negative numbers, as opposed to currently being presented as positive. Second, a footnote tells the reader that OMB Regulatory Analysis requires the use of two discount rates (3% and 7%). But Table 6 presents NPV estimates under only one discount rate----but which one is not noted. Do the final NPV estimates represent valuation under a 3% discount rate or a 7% discount rate?

Finally, the NPV estimates appear to be wildly inaccurate. Even with incorrect theoretical assumptions for CBA (using distributional effects as costs and benefits), even with arbitrary inputs (incorrect interpretation of reduced harvest costs), the presented NPV estimates still cannot be replicated. If using industry harvest cost reductions of \$1 million -- \$2 million per year as a benefit in CBA, discounted over 20 years, how does this result in \$91 million in NPV for the 46mmbf level and \$30 million for the 24mmbf level? From the RIA:

“Applying cost averages before and after the federal court decision in 2011 (\$220 and \$265 per MBF, respectively) indicates the proposed rule and Alternatives 2 through 5 could provide approximately \$2 million dollars in annual savings at the harvest ceiling of 46 MMBF under the 2016 Forest Plan FEIS.” (RIA: 31)

At the upper-bound harvest ceiling of 46 mmbf, harvesting costs reductions are said to be \$2 million annually. Specifically, \$45/mbf of savings multiplied by 46mmbf equals \$2,070,000 of purported savings. To correctly estimate NPV over 20 years, the \$2 million in annual savings (or \$2.07 million) should be entered as positive cash flow for each of the 20 years. With no discount rate, the NPV would simply be the sum of all 20 years of cash flow, or \$41.4 million. However, utilizing a discount rate to account for inflation and a preference for money today as opposed to next year, the \$41.4 million NPV is reduced. At a 3% discount rate, the NPV for the 46mmbf level is \$30.8 million. At 7% discount rate, the NPV for the 46mmbf level is \$21.9 million. The Forest Products Industry—cost savings NPV estimate in Table 6 for the 46mmbf level is \$91 million for all alternatives except the No-Action alternative. This estimate is more than three times the real estimate.<sup>20</sup>

The same issues are present for the lower-bound harvest cost NPVs, the Recreation/Tourism cost NPVs, and the final NPVs. USDA needs to clearly articulate how the NPV estimates were calculated. As of now, Table 6 appears to present wildly inaccurate NPV estimates throughout the entire table. Given the numerous problems in the RIA, none of the analysis is to be trusted. None of the analysis is scientifically or legally credible.

#### 4.2 A Credible Regulatory Impact Assessment and Cost-Benefit Assessment

What should have been USDA’s approach for assessing costs and benefits of the Tongass Roadless exemption as required in RIAs? That is, what would an economically credible cost-benefit assessment for the Tongass Roadless Rule look like? Below, I detail a scientifically appropriate CBA for the Tongass Roadless Rule to illustrate what is lacking in the DEIS and RIA, and to offer a blueprint for USDA to utilize in a revised DEIS.

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<sup>20</sup> For example, at a 7% discount rate, it would require about \$8.5 million in annual savings over 20 years to generate an NPV of \$91 million. The USDA has attributed an extra \$6.5 million in annual cost savings that do not exist, on top of \$1-\$2 million of annual harvest cost savings that also don’t really exist.

If we are to assume that the preferred Alternative will not increase the overall annual Tongass harvest levels and the Projected Timber Sale Quantity (PTSQ), as stated numerous times in the DEIS, we still know that exempting the Tongass from the Roadless Rule will directly lead to timber harvest in current roadless areas (if there will be no harvest in roadless areas, then there is no need for this rulemaking). Expanding Tongass timber production into roadless areas, even if overall forest harvest levels remain the same, will spur a number of economic costs above and beyond the status quo Tongass timber harvest program. These costs include increased road and overall harvesting costs, decreased conservation values, and damages to the quantity and quality of ecosystem services being produced by intact Tongass roadless areas.

USDA has quantifiable secondary data on increased road costs in Tongass roadless areas. Tongass timber road costs, as opposed to felling, yarding, and loading, are primarily paid for by the USFS. Harvest costs of felling, yarding, and loading are the responsibility of the timber sale purchaser and represent costs to the timber industry, not to the USFS or the public. As discussed above, this means that any effects to the timber industry should be placed under the Distributional Effects section. But, changes in costs to the USFS, such as increased roading costs, are changes in societal wealth and need to be included in the cost-benefit assessment. In fact, agency roads for Tongass timber production are the biggest cost contributor for timber budgets, estimated to be 50% of overall agency timber costs from 2001-2008,<sup>21</sup> and over 40% of overall agency timber costs from 1999-2018.<sup>22</sup>

As discussed above, USDA presented no logical reasoning on why harvesting costs would decrease in roadless areas. Harvest costs, including road costs, on the Tongass steadily increase over time as timber sales are continually pushed higher into watersheds and into less economical timber (this includes roadless areas, as they would have already been harvested prior to the 2001 Roadless Rule if they compared to the productivity of stands that have been harvested since the 1950s). Examining harvest costs based only on a comparison of the eight years without the Roadless Rule (2003-2010) to the eight years with the Roadless Rule (2011-2018) is a poor methodology as these years do not actually correlate well with roaded/roadless logging or include all the relevant costs. Few roadless areas were actually harvested from 2003-2010. The USFS has long term data on harvests occurring in roadless areas and should have engineering reports and estimates on the amount and cost of road construction for the 165,000 acres of Roadless old growth that is shifted into the suitable timber base by the proposed rule.<sup>23</sup> Why has this data not been provided in the DEIS? The only logical conclusion is that USDA has not included this essential data because it illustrates that roadless areas will require much greater timber

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<sup>21</sup> Hjerpe, E. 2011. Seeing the Tongass for the Trees: The Economics of Transitioning to Sustainable Forest Management. Washington: The Wilderness Society, 61p. Available at [https://www.researchgate.net/publication/301553259\\_The\\_Economics\\_of\\_a\\_Tongass\\_Transition](https://www.researchgate.net/publication/301553259_The_Economics_of_a_Tongass_Transition)

<sup>22</sup> Taxpayers for Common Sense. 2019. Cutting Our Losses: 20 Years of Money-Losing Timber Sales in the Tongass. Available at <https://www.taxpayer.net/wp-content/uploads/2019/09/TCS-Cutting-Our-Losses-2019-.pdf>

<sup>23</sup> For example, forest planning analysis in the 2016 TLMP Amendment estimates that one mile of new road construction will be needed for every 150 acres of old growth harvest (2016 TLMP EIS: B-27). Extrapolated to the 165,000 acres of old growth that will become suitable under the proposed rule, the preferred alternative may lead to the construction of 1,100 miles of new road, requiring a quarter billion dollars of taxpayer funds. USDA claims that the projected harvest on the 165,000 acres of Roadless timber for the preferred alternative (6) will only be 18,000 acres over 100 years (DEIS: 3-19) ---which would still lead to 120 miles of new road. This leads to the question of why Alternative 6 was chosen as the preferred alternative if only 11% of the Roadless old growth acres will be harvested. Thus, USDA's claims are out of alignment and are suspect.

roads, and thus much greater road construction costs, as compared to harvests in the roaded timber base.

With most of the essential data missing from the DEIS, I use the only data provided by USDA on harvesting costs.<sup>24</sup> These data were received only upon request, as the provided reference in the DEIS was a dead end. Harvesting cost data used by USDA have clear findings of inefficiencies in overall timber harvesting costs---specifically increased timber road costs in Tongass roadless areas. The data reveals that the Roadless exemption period (2003-2010) required, on average, three times the miles of new road construction for timber sales as compared to the period when the Roadless Rule was back in place (2011-2018). An annual average of 15.3 miles of new roads were built during Roadless exemption years, but only 5.0 miles of new road were annually constructed with the Roadless Rule in place despite only slightly greater acres harvested in Roadless exemption years (an annual average of 1,700 acres harvested vs 1,400 acres harvested per year from 2011-2018). Clearly, extending timber sales into Tongass Roadless will require many more miles of road as compared to keeping timber sales out of Roadless.

Furthermore, the timber sale information before and after the Roadless Rule change in 2011 show that for every million board feet (mmbf) of Tongass timber harvested during the Roadless Rule exemption, twice as many miles of new roads were constructed as were for every million board feet harvested with the Roadless Rule in place. From 2003-2010, .42 miles of new road were constructed for every million board feet harvested. From 2011-2018, only .21 miles of new road were required for every million board feet harvested, indicating that harvest in Tongass roadless areas will require, on average, .21 more miles of new road construction for each million board feet harvested. While overall Tongass harvest levels may stay the same under the current Roadless rulemaking, overall agency road costs are bound to increase, decreasing Tongass timber production efficiency and increasing federal subsidies. And, as stated earlier, the 2003-2010 to 2011-2018 roadless rule dichotomy is a poor estimate of harvest costs, and the actual increase in roads and road costs for Roadless timber are likely much greater than the data used in this analysis.

While there is variance in Tongass road costs, especially in regard to slope angle, average forest-wide road construction costs were estimated at \$185,000 per mile and \$50,000 per mile for maintenance in the 2008 TLMP.<sup>25</sup> Adjusting for inflation reveals that current Tongass road construction costs are approximately \$225,000 per mile. By incorporating projected timber sale incursions into roadless areas and the increase in average road construction costs, a credible cost-benefit assessment can be conducted. Because the Tongass timber sale program loses substantial amounts of money (i.e., stumpage fees are a fraction of agency timber costs) and damages all other resources and industries, there are no benefits to include in a cost-benefit assessment of exempting the Tongass from the Roadless Rule.

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<sup>24</sup> The USDA reference for Tongass timber harvesting costs presented in the RIA (e.g., p. 29) is presented as “USDA Forest Service 2019b. Timber Sale Summary Reports and Accomplishments, Region 10 RV (Residual Value) Appraisals of Record (1+ MMBF, from 2003 to 2018) available at: [https://www.fs.usda.gov/detail/r10/landmanagement/resourcemanagement/.](https://www.fs.usda.gov/detail/r10/landmanagement/resourcemanagement/)” No document with the referenced data was available at the listed website. Upon requesting the source for harvesting cost information, USDA released an Excel spreadsheet titled “Region 10 timber sales before and after 2011 Roadless ip 112219.”

<sup>25</sup> 2008 FEIS, TLMP Amendment, Vol. II, App. B at B-11.

While the rulemaking does not authorize site-specific activities, it does authorize a shifting of Tongass timber sales to roadless areas. To provide a general overview of costs and benefits of increasing Tongass timber sales in roadless areas, I examine three potential outcomes: small, medium, and large timber sale incursions into roadless areas.<sup>26</sup> Utilizing the same upper and lower bound of anticipated Tongass timber harvest as presented in USDA’s cost-benefit assessment (Table 6 of the RIA, p. 35), I conducted a net present valuation of shifting 25% (small), 50% (medium), and 75% (large) of projected timber sales into roadless areas. Table 1 shows the harvest scenarios and the annual timber road cost increases associated with each scenario.

**Table 1: Roadless Timber Incursion Scenarios for Tongass Roadless Rule Cost-Benefit Assessment**

Type of Roadless Timber Incursion	Harvest Scenario	MMBF Harvested in Roadless Areas	Additional Roads /mmbf	Additional Miles of New Road Needed	Road Costs/mile	Annual Timber Road Cost Increase
<i>Upper-bound--46MMBF harvest ceiling</i>						
Small	25% of timber sales shifted to Roadless	11.5	0.21	2.42	\$ 225,000	\$ 543,375
Medium	50% of timber sales shifted to Roadless	23	0.21	4.83	\$ 225,000	\$ 1,086,750
Large	75% of timber sales shifted to Roadless	34.5	0.21	7.25	\$ 225,000	\$ 1,630,125
<i>Lower-bound--24MMBF</i>						
Small	25% of timber sales shifted to Roadless	6	0.21	1.26	\$ 225,000	\$ 283,500
Medium	50% of timber sales shifted to Roadless	12	0.21	2.52	\$ 225,000	\$ 567,000
Large	75% of timber sales shifted to Roadless	18	0.21	3.78	\$ 225,000	\$ 850,500

With a range of Roadless harvest scenarios, sensitivity analysis can be conducted to provide a realistic range of road construction cost increases expected under the proposed rule. Table 2 illustrates the NPV for road construction cost increases under two discount rates. These NPVs show tremendous costs over the next 20 years, losses ranging from \$3 million to \$24 million.

<sup>26</sup> The Roadless timber sale incursion scenarios utilize the USFS-provided data on harvesting and road needs that are based on the eight years with no Roadless Rule (2003-2010) compared to the eight years with the Roadless Rule (2011-2018). As discussed in the text, this short-term comparison of the road/roadless dichotomy is a poor substitute for data focused strictly on timber sales and harvest in roadless areas. The USFS data also only include estimates of new road miles needed per mmbf of harvest. Yet, numerous miles of timber roads have been constructed for sales that go unsold and for large portions of timber sales that are regularly defaulted on. The result is that the presented increase in annual road construction and road costs in this section is likely to be vastly underestimated.

**Table 2: Net Present Valuation of 20-Year Discounted Agency Timber Road Cost Increases for Proposed Rule (Alternative 6)<sup>1</sup>**

Full Exemption Alternative Scenarios for Proposed Rule		Increased Annual Agency Road Cost	NPV @ 3%	NPV @ 7%
<i>Upper-bound--46MMBF harvest ceiling</i>				
Small	25% of timber sales shifted to Roadless	(\$543,375)	(\$8,084,000)	(\$5,757,000)
Medium	50% of timber sales shifted to Roadless	(\$1,086,750)	(\$16,168,000)	(\$11,513,000)
Large	75% of timber sales shifted to Roadless	(\$1,630,125)	(\$24,252,000)	(\$17,270,000)
<i>Lower-bound--24MMBF</i>				
Small	25% of timber sales shifted to Roadless	(\$283,500)	(\$4,218,000)	(\$3,003,000)
Medium	50% of timber sales shifted to Roadless	(\$567,000)	(\$8,436,000)	(\$6,007,000)
Large	75% of timber sales shifted to Roadless	(\$850,500)	(\$12,653,000)	(\$9,010,000)

<sup>1</sup>OMB Circular A-4 - Regulatory Analysis (Sep 17, 2003) requires use of two discount rates (both 3 and 7 percent).

Economic efficiency analysis, or cost-benefit assessment, on public lands must also include the opportunity costs, or benefits foregone, of choosing a preferred land management alternative.<sup>27</sup> That is, what benefits will be foregone by removing Tongass Roadless protections? In the case of the proposed full exemption, the greatest loss of benefits occur to societal conservation values held for pristine and protected Tongass forests. Conservation values are comprised of both use and passive use values held for intact Tongass old growth forests such as those contained in roadless areas. Combined, use and passive use values are known as Total Economic Value (TEV). Use values include direct and indirect use values, such as consumer surplus for recreation and benefits received from ecosystem services produced by roadless areas such as clean drinking water. Passive use values include option, bequest, and existence values held for Tongass roadless areas. Because conservation values are largely comprised of non-market values, they are not as easy to quantify as board feet of timber harvested and typically require direct survey techniques focused on willingness to pay for conservation.

Agencies are traditionally forced to use existing secondary data for analysis as the costs and time for gathering primary data for all regulatory actions is prohibitive. Many national forests may not have existing secondary data on willingness to pay values for forest conservation, to use for quantifying opportunity costs in cost-benefit assessment of development activities. Fortunately, the Tongass does. Recent peer-reviewed research<sup>28</sup> describes a choice experiment quantifying regional Alaska residents' willingness to pay for conserving Tongass old growth forests as opposed to harvesting them. Econometric analysis shows that Alaska residents are willing to pay \$150 per acre for the conservation, not harvest, of Tongass old growth in the suitable timber base.<sup>29</sup> As the preferred Alternative (6) shifts

<sup>27</sup> See for example, Freeman, A. M. (2003). The Measurement of Environmental and Resource Values. *Resources for the Future*. Washington DC, p.202; and Hjerpe, E. E., & Hussain, A. (2016). Willingness to pay for ecosystem conservation in Alaska's Tongass National Forest: a choice modeling study. *Ecology and Society*, 21(2).

<sup>28</sup> Hjerpe, E. E., & Hussain, A. (2016). Willingness to pay for ecosystem conservation in Alaska's Tongass National Forest: a choice modeling study. *Ecology and Society*, 21(2). Available at <https://www.ecologyandsociety.org/vol21/iss2/art8/>

<sup>29</sup> *Ibid.*

165,000 acres of Roadless old growth to suitable for timber production, a total conservation benefit value of \$24,750,000 (165,000 acres X \$150/acre) is lost. These foregone benefits are a one-time societal cost, regardless of how many acres are eventually harvested. Just knowing that these once pristine and roadless areas are open to timber development and have lost their protective status results in the substantial losses in ecosystem conservation value.

Adding in lost conservation benefits<sup>30</sup> as opportunity costs associated with the proposed rule allows for a complete cost-benefit assessment to be estimated, one that appropriately accords with economic theory. Table 3 shows a full cost-benefit assessment of the proposed rule under two discount rates and under six Roadless timber incursion scenarios.

**Table 3: Net Present Valuation of 20-Year Discounted Costs and Benefits for Proposed Rule (Alternative 6) Under Six Roadless Incursion Scenarios<sup>1,2,3</sup>**

Full Exemption Alternative Scenarios for Proposed Rule		Increased Annual Agency Road Cost	Lost Conservation Benefits*	NPV @ 3%	NPV @ 7%
<i>Upper-bound--46MMBF harvest ceiling</i>					
Small	25% of timber shifted to Roadless	(\$543,375)	(\$24,750,000)	(\$32,113,000)	(\$28,887,000)
Medium	50% of timber shifted to Roadless	(\$1,086,750)	(\$24,750,000)	(\$40,197,000)	(\$34,644,000)
Large	75% of timber shifted to Roadless	(\$1,630,125)	(\$24,750,000)	(\$48,281,000)	(\$40,400,000)
<i>Lower-bound--24MMBF</i>					
Small	25% of timber shifted to Roadless	(\$283,500)	(\$24,750,000)	(\$28,247,000)	(\$26,134,000)
Medium	50% of timber shifted to Roadless	(\$567,000)	(\$24,750,000)	(\$32,465,000)	(\$29,138,000)
Large	75% of timber shifted to Roadless	(\$850,500)	(\$24,750,000)	(\$36,682,000)	(\$32,141,000)

\* Loss of conservation benefits are entered as a one-time cost in Year 1 only.

<sup>1</sup>The baseline for comparison is a continuation of the 2001 Roadless Rule (No-Action Alternative). The No-Action Alternative would produce zero increased costs and has an NPV of \$0, a substantially higher NPV than the preferred Alternative.

<sup>2</sup>As there are no economic benefits for exempting the Tongass from the Roadless Rule, the cost-benefit analysis is comprised only of costs and all scenarios result in negative NPV estimates.

<sup>3</sup>OMB Circular A-4 - Regulatory Analysis (Sep 17, 2003) requires use of two discount rates (both 3 and 7 percent).

<sup>30</sup> WTP estimates in Hjerpe and Hussain (2016) are comprised of both use and passive use values. Choice experiment respondents were provided information on environmental damages from Tongass timber production, along with tradeoffs such as providing for timber employment. The average WTP for conserving Tongass old growth includes the societal value for passive use, such as bequest values for knowing that our children will have pristine old growth forests. It also includes the value society holds for avoiding the associated environmental damage that comes from clearcutting old growth. This value includes direct and indirect use values such as damages to subsistence ability (direct use value) and damages to carbon sequestration that affects climate change (indirect use value). The overall WTP is a value known in economics as Total Economic Value (TEV) and is currently the best way to capture societal value held for avoiding environmental damages and foregone conservation benefits when protected areas lose their protective designation.

The cost-benefit assessment shows that all scenarios result in negative NPV, losses ranging from \$26 million to \$48 million. But the reality is that adoption of the proposed rule will result in much greater losses than illustrated in Table 3. The presented cost-benefit assessment is conservative in every analyzed cost. Not included in this assessment are the additional road decommissioning costs that will be spurred by greater road construction in roadless areas along with greater road maintenance costs. If nearly all of the newly constructed timber roads in roadless areas will be decommissioned, as stated in the DEIS,<sup>31</sup> then the additional roads needed for timber harvest in roadless areas will also result in additional road decommissioning needs. Roads that are not decommissioned will require maintenance. Road maintenance and decommissioning will likely increase overall road costs used in this analysis by 50%. It is strongly recommended that USDA incorporate increased road decommissioning costs in a revised DEIS.

Administrative costs associated with increased road building in roadless areas are estimated to be 40% of overall timber program costs.<sup>32</sup> Additional road construction needs in roadless areas will lead to much greater USFS administration, contracts, and site development needs. Instead of working on restoration projects and land management activities that benefit fish and wildlife, more USFS employees will be needed to administer road construction in roadless areas. In the revised DEIS, USDA should include additional taxpayer costs in indirect and overhead expenses associated with additional road construction that will be spurred by the proposed rule.

Mean willingness to pay estimates used for determining lost conservation benefits were only extrapolated to Alaskan residents<sup>33</sup> and are also very conservative estimates. Given the importance and uniqueness of the Tongass as spectacular public lands, we know that old growth conservation values for the Tongass extend to some degree throughout the rest of the U.S. Given its vast carbon stores, Tongass roadless areas are valued for their conservation throughout the entire world. Research<sup>34</sup> has shown that willingness to pay values, especially for the conservation of iconic and scarce landscapes such as coastal temperate rainforests, extend thousands of miles from the valuation site. USDA should model lost Tongass conservation benefits for the entire U.S. in the revised DEIS.

Finally, other opportunity costs of a Tongass Roadless Rule exemption are omitted in the RIA and DEIS. Increased agency costs from the proposed rule could be used for other, more sustainable, Tongass opportunities instead. For example, if it is “jobs-in-the-woods” that USDA and the State of Alaska are seeking, the focus should not be on developing Tongass roadless areas. The focus and subsidies should

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<sup>31</sup> Page 43 of the RIA... “Nearly all new roads constructed under the regulatory alternatives would be closed following harvest.”

<sup>32</sup> Hjerpe, E. 2011. *Seeing the Tongass for the Trees: The Economics of Transitioning to Sustainable Forest Management*. Washington: The Wilderness Society, 61p. Available at [https://www.researchgate.net/publication/301553259\\_The\\_Economics\\_of\\_a\\_Tongass\\_Transition](https://www.researchgate.net/publication/301553259_The_Economics_of_a_Tongass_Transition)

<sup>33</sup> See Hjerpe, E. E., & Hussain, A. (2016). Willingness to pay for ecosystem conservation in Alaska’s Tongass National Forest: a choice modeling study. *Ecology and Society*, 21(2).

<sup>34</sup> For dam removal and salmon WTP, Loomis (1996) found that the rest of the U.S. households reflected 97% of the benefits. For protecting California old growth forests from fire, Loomis and Gonzalez-Caban (1996) found that nonresidents WTP declined by only 1% for each 1000-mile increase. See: Loomis, J. B. 1996. How large is the extent of the market for public goods: evidence from a nationwide contingent valuation survey? *Applied Economics* 28:779-782 and Loomis, J. B., and A. Gonzalez-Caban. 1996. The importance of the market area determination for estimating aggregate benefits of public goods: testing differences in resident and nonresident willingness to pay. *Agricultural and Resource Economics Review* 25:161-169.

be directed at vastly increasing Tongass recreation and restoration budgets. The Forest Service estimates that there are 500 miles of Tongass fish streams in need of in-channel restoration, along with 15,000 acres of riparian second growth in need of thinning (USFS 2006).<sup>35</sup> There are also 2,300 miles of closed roads on the Tongass, over 500 miles of which represent opportunities for improving water quality and fish habitat (USFS 2006).<sup>36</sup> USDA must focus on community stability and job creation that *help* maintain and restore environmental functions, as opposed to coming at the *cost* of the environment.

#### 4.3 Cost-Benefit Assessment of the Tongass Timber Program

In addition to the cost-benefit of the proposed rulemaking that must be presented in the RIA, USDA should also include overall cost-benefit assessments of increasing Tongass logging. That is, because the proposed rule without limitation on future plan amendments opens the door to substantially greater roadless intrusions over time, the RIA needs to consider the potential costs and benefits of longer range and broader scale old growth logging and road construction than it currently does. An overview of costs and benefits for the Tongass timber program, above and beyond the Roadless rulemaking, would properly frame the significant taxpayer losses associated with any rulemaking aimed at maintaining or increasing Tongass timber harvests. Illustrating the huge subsidies required to produce Tongass timber would more clearly demonstrate that any federal policy that will boost the timber industry will exacerbate existing economic inefficiencies (i.e., increase the costs to benefits ratio).

From a societal perspective, timber production on federal lands have costs associated with preparing timber sales and lost conservation values. Correlating benefits are associated with revenue, or stumpage fees paid by private corporations to the USFS for access to publicly owned timber. In the last decade, there have been four studies that have quantified overall costs and benefits of the Tongass timber program. Interestingly, only one of these studies is acknowledged in the DEIS and RIA. To fill the gap in the Tongass timber program cost-benefit literature, I present the details of the four studies in Table 4.

**Table 4: Research on Cost-Benefit Ratios for Tongass Timber Program**

Source	Years	Costs	Benefits (Revenue)	Cost-Benefit Ratio	Notes
<i>Taxpayers for Common Sense (2019)</i>	1999-2018	\$632 million	\$33.8 million	18.7	Includes road costs
<i>Hjerpe and Hussain (2016)</i>	2008, 2012	\$108.5/mbf	\$7.12/mbf	15.2	Does <b>not</b> include road costs; includes lost conservation benefits
<i>GAO (2016)</i>	2005-2014	\$12.5 million/year	\$1.1 million/year	11.4	Does <b>not</b> include road costs
<i>Hjerpe (2011)</i>	2001-2008	\$255 million	\$7 million	36.4	Includes road costs

**Sources:** Taxpayers for Common Sense. (2019). Cutting Our Losses: 20 Years of Money-Losing Timber Sales in the Tongass; Hjerpe, E. E., & Hussain, A. (2016). Willingness to pay for ecosystem conservation in Alaska’s Tongass National Forest: a choice modeling study. *Ecology and Society*, 21(2); USGAO. (2016). Tongass National Forest: Forest Service’s Actions Related to Its Planned Timber Program Transition. GAO-16-456; Hjerpe, E. (2011). Seeing the Tongass for the Trees: The Economics of Transitioning to Sustainable Forest Management. Washington: The Wilderness Society, 61p.

<sup>35</sup> USFS. 2006. Investing in habitat improvements vital for ecological sustainability, local economies, subsistence users. Alaska Region Newsletter, June 2006. 2p.

<sup>36</sup> *Ibid.*

From 1999 to 2018, USFS spending on roads in the Tongass made up more than 40% of all timber sale expenses.<sup>37</sup> To compare similar cost-benefit ratios, I update two of the estimates that previously did not include road costs by adding in road costs at 40% of total costs. Table 5 illustrates complete cost-benefit ratios for the Tongass.

**Table 5: Research on Full Cost-Benefit Ratios for Tongass Timber Program**

Source	Years	Total Costs	Total Benefits (Revenue)	Cost-Benefit Ratio
<i>Taxpayers for Common Sense (2019)</i>	1999-2018	\$632 million	\$33.8 million	<b>18.7</b>
<i>Hjerpe and Hussain (2016)</i>	2008, 2012	\$181/mbf	\$7.12/mbf	<b>25.4</b>
<i>GAO (2016)</i>	2005-2014	\$20.8 million/year	\$1.1 million/year	<b>18.9</b>
<i>Hjerpe (2011)</i>	2001-2008	\$255 million	\$7 million	<b>36.4</b>

Throughout different periods over the last 20 years, the Tongass timber program has a total cost-benefit ratio ranging from 18.7—36.4, with an average cost-benefit ratio of 25. That is, on average, for every \$1,000,000 received by the U.S. Treasury in Tongass timber stumpage fees, U.S. taxpayers pay \$25,000,000 in federal agency costs to subsidize timber harvest. It is important to note that these timber program costs do not include associated indirect and overhead expenses which were estimated at 40% of total costs for Tongass timber from 2001—2008.<sup>38</sup>

With costs exceeding benefits by 25, and only 61 total Tongass timber jobs supported by millions in taxpayer dollars, the Tongass timber program makes zero economic sense. Over the years, the federal government loses billions of dollars while causing substantial ecological damage. The original Roadless Rule was put in place to eliminate this exact government waste and to avoid this exact ecological destruction. Any federal rulemaking related to Tongass timber production, and specifically the current proposed Roadless exemption, should start with economic facts that clearly show that any attempts to maintain or increase Tongass timber production will only create greater societal losses. Only when dealing with the economic facts can a reasonable determination be made that exempting the Tongass from the Roadless Rule is bad business.

#### 4.4 Agency Costs and Control of Regulatory Costs

In the RIA section “Agency Costs including Control of Regulatory Costs” (RIA: 37), USDA provides no evidence that agency costs will be reduced. USDA conflates incorrectly presumed timber industry savings in reduced harvest costs to reduced agency costs. This is incorrect. The economic reality is that

<sup>37</sup> Taxpayers for Common Sense. 2019. Cutting Our Losses: 20 Years of Money-Losing Timber Sales in the Tongass. Available at Available at <https://www.taxpayer.net/wp-content/uploads/2019/09/TCS-Cutting-Our-Losses-2019-.pdf>

<sup>38</sup> Hjerpe, E. 2011. Seeing the Tongass for the Trees: The Economics of Transitioning to Sustainable Forest Management. Washington: The Wilderness Society, 61p. Available at [https://www.researchgate.net/publication/301553259\\_The\\_Economics\\_of\\_a\\_Tongass\\_Transition](https://www.researchgate.net/publication/301553259_The_Economics_of_a_Tongass_Transition)

agency costs will sharply increase under the proposed rule, especially for road construction, road decommissioning, and road maintenance.

The Introduction section of the RIA states:

“If costs from potential displacement of recreationists accrued they would occur alongside cost reduction from more acres of land available for timber harvest. Timber harvest levels on the Tongass NF are set by the 2016 Forest Plan (USDA Forest Service 2016) and continual timber demand monitoring, currently 46 million board feet (MMBF). The propose rule (Alternatives 6) would increase flexibility for timber managers for designing timber sales that appraise positive.” (RIA: 6)

How would agency “cost reductions” occur by making more acres of land available for timber harvest? This is nonsensical. Expanding the Tongass woodshed will increase costs and will certainly **not** lead to cost reductions.

The section continues:

“Cost savings from improved flexibility could, in turn, potentially improve the Forest Service’s ability to offer economic sales that meet the needs of industry. Areas closer to markets, either a mill or export facility, are also more likely to offer more economic timber sale options. More distant areas would be relatively expensive to harvest and less likely to be accessed.” (RIA: 6)

Cost savings for the agency are never divulged in the RIA or DEIS. What are these costs savings and how would they occur? By the USDA’s own admission, agency costs for timber production would substantially increase in roadless areas. Purported harvest costs reductions accrue to the timber industry only. These are not savings for the agency, nor public taxpayer savings. This statement is wholly inaccurate and is simply is not supported in the RIA. This appears to be an attempt to mislead the public and an attempt to satisfy Executive Order 13771. Contrary to this concluding statement, the CBA and RIA conducted by USDA fails the most basic tests for economic rigor and have certainly not illustrated a maximization of net benefits, nor that benefits would outweigh the extremely expensive costs of exempting the Tongass from the Roadless Rule.

The concluding paragraph in the Agency Costs section states:

“Cost savings from improved flexibility for the agency and timber industry would accrue alongside other benefits, displayed in Table 5 and discussed above; including reduced cost for leasable mineral availability, renewable energy development potential, potential for development of state roads and other transportation projects, and benefits to Alaska native customary and traditional uses.” (RIA: 45).

No essential energy or transportation projects have been stopped by the Tongass Roadless Rule. Other purported benefits are also red herrings. As stated above, these “cost savings” are never divulged because they won’t actually occur. Expanding the Tongass timber footprint into roadless areas will universally increase all agency costs. Other presumed benefits in this statement are questionable to say the least. It is difficult to even understand what is meant by “reduced cost for leasable mineral availability?” Regardless, the Environmental Effects analysis shows that there are no leasable minerals on the Tongass (DEIS: 3-155). So how will non-existent costs be reduced?

As shown in the previous section, the agency costs for Tongass timber are already out of control and will escalate under the preferred Alternative (6). Alaska USFS already has a road management backlog estimated at \$68 million.<sup>39</sup> Part of the annual Tongass timber agency costs, and miniscule benefits, are acknowledged in the RIA:

“On average, the Forest Service spent approximately \$12.5 million per year to administer Tongass timber sales from 2005-2014, excluding road building costs, and received approximately \$1.1 million in revenue per year (GAO 2016).” (RIA: 38)

However, none of the increased road costs that will occur under the proposed rule are presented in the Agency Costs section. At a minimum, per mile road construction, decommissioning, and maintenance costs for the Tongass must be presented in a revised DEIS. Furthermore, USDA must address current road maintenance backlogs in the Tongass, necessary culvert replacements, and watershed restoration needs and estimate current costs. Also not reported in the Agency Costs section, is the estimated \$5 million dollar price tag for conducting this rulemaking, much of which has gone to the State of Alaska and to the Alaska timber industry lobby group (Alaska Forest Association).<sup>40</sup> With no rational purpose or need, and without verifying any of the state’s claims of economic harm, this rulemaking should have never been initiated and is a large waste of taxpayer dollars. Excessive agency spending will be required if the Tongass is exempted from the Roadless rule. How are these myriad costs not acknowledged in the Agency Cost section?

#### 4.5 The Distributional Effects Show the Preferred Rule will Have Zero Impact on Regional Employment

If the proposed rule is “intended to provide for economic development opportunities in Southeast Alaska” (RIA: 45), then surely the DEIS and RIA would contain economic analysis showing how the rule would increase economic activity and increase regional employment. However, the RIA and the Distributional Effects section does not project any increased economic activity or employment from the proposed rule. This is the case even for the timber industry: “Thus no change in timber related employment or income is expected as a result of the proposed rule or other regulatory alternatives.” (RIA: 40)

The primary component of distributional effects used in the NEPA process for public lands rulemaking is economic impact analysis. Economic impact analysis, also known as economic contribution analysis, measures the resulting market impacts associated with a change in regional final demand resulting from a changed land policy. Economic impacts are part of distributional effects because they represent shifts in regional wealth. This shift in final demand results in distributional effects that have a greater impact on industries favored by the rulemaking.

That the Distributional Effects section of the RIA shows zero changes in market impacts or regional employment is clear evidence that the entire purpose and need for this rulemaking is not legitimate. Rhetoric and propaganda from Alaska politicians and the current Administration hold no water. For example, Alaska Governor Michael Dunleavy stated on November 20<sup>th</sup> that, “Exempting the Tongass from the Roadless Rule will create new jobs and economic activity in a region hit hard by the misguided

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<sup>39</sup> USFS responses to Rep. Mike Quigley.

<sup>40</sup> “Congressional Democrats ask for investigation into Alaska use of forest grant.” Alaska Daily News, 12/1/19.

policies of a previous administration.”<sup>41</sup> Apparently Gov. Dunleavy and his staff have not read the DEIS and the Distributional Effects section in the RIA, where it is clearly divulged that there will be NO new jobs and NO new economic activity spurred by the proposed rule.

## 5. An Ecosystem Service Valuation for Tongass Roadless Areas

When viewed through an ecosystem services lens, it becomes abundantly clear that exempting the Tongass from the Roadless Rule will damage all other aspects of the Southeast Alaska economy in order to prop up the timber industry. Ecosystem services broadly represent nature’s benefits to humans and can be classified into regulating, supporting, provisioning, and cultural. Expanding the Tongass timber harvesting woodshed by increasing the suitable timber base will have adverse environmental consequences on a bevy of ecosystem services currently protected by the Roadless Rule. Because the DEIS does not include an ecosystem service perspective and has failed to even qualitatively describe the full environmental consequences from removing the Tongass Roadless Rule, despite explicit flagging of these economic issues in the scoping process, the DEIS must be withdrawn and a new one must be produced.

Even if one were to accept USDA’s insistence that Tongass harvest levels will not increase with the removal of the Roadless Rule, as stated numerous times in the DEIS, the Tongass timber footprint will greatly expand. The habitat fragmentation, sediment alterations, and stream damage from new incursions into Tongass roadless areas will come at a steep price. Unfortunately, secondary data is often missing for quantifying natural resource damages incurred due to expanding the timber footprint into Tongass roadless areas. These resource damages stemming from timber development include reduced water quality, loss of wildlife habitat, and increased carbon emissions. Despite not having easily transferable quantified economic values for damages to ecosystem services, adverse effects from timber production need to be included in a revised DEIS.

A review of the scientific literature paints a very clear picture: Tongass roadless forests provide much greater economic value than the logged over forests. Developing roadless forests for clearcutting of Tongass old growth has been shown to have adverse effects on critical regulating and supporting ecosystem services by increasing erosion<sup>42</sup> and sedimentation of salmon streams.<sup>43</sup> Tongass timber harvests alter hydrologic processes through erosion<sup>44</sup> and reduce large woody debris recruitment to streams resulting in degraded salmon habitat.<sup>45</sup> Road construction needed to access timber also limits

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<sup>41</sup> *Ibid.*

<sup>42</sup> Kahklen, K and W. Hartsog. 1998. Results of road erosion studies on the Tongass National Forest. Unpublished report for USDA Forest Service, Juneau Forestry Sciences Laboratory. 47p.

<sup>43</sup> Tiegs, S., D. Chaloner, P. Levi, J. Ruegg, J. Tank, and G. Lambert. 2008. Timber harvest transforms ecological roles of salmon in southeast Alaska rainforest streams. *Ecological Applications* 18(1): 4-11.

<sup>44</sup> Gomi, T, R. Sidle, and D. Swanston. 2004. Hydrogeomorphic linkages of sediment transport in headwater streams, Maybeso Experimental Forest, southeast Alaska. *Hydrological Processes* 18: 667-683.

<sup>45</sup> Heifetz, J., M. Murphy, and K. Koski. 1986. Effects of logging on winter habitat of juvenile salmonids in Alaskan streams. *North American Journal of Fisheries Management* 6(1): 52-58.

fish passage due to perched culverts.<sup>46</sup> Edges of Tongass clearcuts lose wind firmness, increasing blow down near harvest sites and leading to unraveling of stream buffers.<sup>47</sup>

These adverse effects on regulating and supporting Tongass ecosystem services associated with opening up roadless forests for development will have cascading effects on all biodiversity, particularly salmon. Ultimately, developing Tongass roadless areas will result in fewer salmon for recreational fishing, guided sport fishing, subsistence fishing, and commercial fisheries. This will, in turn, negatively affect economic activities and employment in industries that are much more important to Southeast Alaska than the timber industry. These are the economic trade-offs that must be analyzed and acknowledged in a revised DEIS.

The damage to streams and rivers is just part of the ecosystem service degradation legacy left by Tongass logging. Clearcutting Tongass old growth is also very problematic for forest structure and wildlife habitat. Due to extended decades of stem exclusion phases after clearcut regeneration, Tongass second growth becomes a liability to wildlife dependent on understory forbs and plants. This is particularly problematic for Sitka black-tailed deer,<sup>48</sup> but has cascading adverse effects on wolves and biological regulation functions of the forest.<sup>49</sup> Overstory bird species, such as goshawks and murrelets, also face declining habitat whenever Tongass old growth is clearcut.<sup>50</sup>

Tongass roadless forests represent vast carbon reservoirs. If these forests are opened to timber harvest, carbon will be released contributing to increased climate change. Since Tongass old growth forests have been estimated to contain about eight percent of the coterminous U.S.' carbon stocks<sup>51</sup> and some of the last old growth temperate rainforest in the world,<sup>52</sup> the Tongass also holds tremendous global value and is a critical component in helping mitigate climate change. Using international carbon markets,

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<sup>46</sup> Dunlap, R. 1997. Summary of the 1997 Fish Habitat Risk Assessment Panel, Tongass National Forest, Juneau, Alaska. May 7, 1997.

<sup>47</sup> Harris, A. 1999. Wind in the forests of southeast Alaska and guides for reducing damage. Gen. Tech. Rep. PNW-GTR-244. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 63 p.

<sup>48</sup> Schoen, J., M. Kirchoff, and M. Thomas. 1985. Seasonal distribution and habitat use by sitka blacktailed deer in southeastern Alaska. Division of Game, Alaska Department of Fish and Game, Juneau, AK; Mazza, R. 2003. Hunter demand for deer on Prince of Wales Island, Alaska: an analysis of influencing factors. Gen. Tech. Rep. PNW-GTR-581. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 21 p.

<sup>49</sup> Person, D., C. Darimont, P. Paquet, and R. Bowyer. 2001. Succession debt: effects of clear-cut logging on wolf-deer predator-prey dynamics in coastal British Columbia and Southeast Alaska. Paper presented at Canid Biology and Conservation: An International Conference. Oxford University.

<sup>50</sup> Flatten, C., K. Titus, and R. Lowell. 2001. Northern goshawk population monitoring, population ecology and diet on the Tongass National Forest. Alaska Department of Fish and Game. Juneau, AK; Cotter, P. and M. Kirchoff. 2007. Marbled Murrelet. In J. Schoen and E. Dovichin, eds. 2007. The coastal forests and mountain ecoregion of southeastern Alaska and the Tongass National Forest. Audubon Alaska and The Nature Conservancy, Anchorage, Alaska.

<sup>51</sup> Leighty, W., S. Hamburg, and J. Caouette. 2006. Effects of management on carbon sequestration in forest biomass in southeast Alaska. *Ecosystems* 9: 1051-1065.

<sup>52</sup> DellaSala, D. A., Moola, F., Alaback, P., Paquet, P. C., Schoen, J. W., & Noss, R. F. (2011). Temperate and boreal rainforests of the Pacific Coast of North America. In *Temperate and boreal rainforests of the world: ecology and conservation* (pp. 42-81). Island Press, Washington, DC.

researchers have estimated a market value of \$3 to \$7 million a year for stopping Tongass old growth harvesting.<sup>53</sup>

## 5.1 Ecosystem Service Damage from Roadless Timber Development Adversely Impacts the Regional Economy

Resource damage from pursuing Tongass timber production in roadless areas manifests in various economic forms and leaves a natural capital debt for future generations. Reduced black-tailed deer populations and reduced salmon have a direct economic effect on Southeast Alaska's largest private sector industries of tourism and seafood production. Subsistence activities, which comprise a large share of many Alaska residents' annual food budgets, are also degraded by reducing the number of animals for harvest and increasing the time and resources needed to fill the freezer. These resource damages cause economic harm to residents. The natural resource damages must be accounted for in the rulemaking process and must be countered with mitigation efforts.

For example, the latest economic impacts assessment for Tongass recreation shows that recreational visits are increasing and are at almost three million visits per year.<sup>54</sup> Visitors spend money in Tongass gateway communities for transportation services, food, gear, and lodging. In total, Tongass visitor expenditures are estimated at about \$400 million annually, resulting in over \$100 million in personal income for Southeast Alaska residents. Tongass recreational expenditures support approximately 4,000 direct local jobs, and over 5,000 jobs when including multiplier effects.<sup>55</sup>

The primary appeal for recreating on the Tongass is to enjoy its wildness and ecologically intact attributes that result in abundant native fish and wildlife. Sport fishing and hunting adventures in Southeast Alaska are considered to be "bucket list" trips for avid fisherman and hunters. Wildlife viewing and the ability to view unspoiled old growth forests, glaciers, and mountains spur numerous cruise ship passengers and do-it-yourselfers to pay substantial money to visit the Tongass.

The pristine nature of the Tongass is its comparative economic advantage for attracting tourists and recreationists from the Lower 48. If Tongass roadless areas are opened up for greater road building and clearcutting, this comparative advantage is decreased and will diminish the attractiveness of the Tongass for recreation. Are a handful of new subsidized logging jobs worth damaging the vibrant recreation industry on the Tongass? Are a handful of subsidized sawmill jobs worth damaging the vibrant commercial and sport fisheries associated with the Tongass? Economic theory indicates the answer is a resounding no.

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<sup>53</sup> Leighty, W., S. Hamburg, and J. Caouette. 2006. Effects of management on carbon sequestration in forest biomass in southeast Alaska. *Ecosystems* 9: 1051-1065.

<sup>54</sup> USDA. 2017. Economic effects of national forest recreation in Alaska. Alaska Region Briefing Paper, March 2017.

<sup>55</sup> *Ibid.*

**CENTER FOR BIOLOGICAL DIVERSITY  
SOUTHEAST ALASKA CONSERVATION COUNCIL  
ALASKA WILDERNESS LEAGUE**

April 12, 2019

Paul Ray, Acting Administrator  
Office of Information and Regulatory Affairs, Office of Management and Budget  
Eisenhower Executive Office Building  
1650 Pennsylvania Ave., NW, Room 262  
Washington, DC 20503  
Email: Paul\_Ray@omb.eop.gov; OIRA\_submission@omb.eop.gov

**Re: OIRA Should Consider the U.S. Department of Agriculture’s Proposed Amendment to the Roadless Rule in Alaska to Be a Significant Rulemaking Pursuant to E.O. 12,866.**

Dear Acting Administrator Ray:

On August 30, 2018, the U.S. Department of Agriculture (USDA) published notice of intent to initiate a “public rulemaking process to address the management of inventoried roadless areas on the Tongass National Forest within the State of Alaska,” also known as the Alaska Roadless Rule.<sup>1</sup> The proposed rulemaking would amend the 2001 Roadless Area Conservation Rule, 36 C.F.R. 294.10 - .14, 66 Fed. Reg. 3,244 (Jan. 12, 2001). The USDA did not include the proposed Alaska Rule on the Unified Agenda of Regulatory Actions for Fall 2018.<sup>2</sup>

Because the Alaska Roadless Rule meets the test for a “significant regulatory action” as defined in Executive Order 12,866, it must be reviewed by Office of Information and Regulatory Affairs (OIRA) pursuant to that Order.<sup>3</sup> Prior Democratic and Republican administrations alike have concluded that roadless rules – including the 2001 Roadless Area Conservation Rule, and every major revision to it – constituted “significant regulatory action” pursuant to E.O. 12,866. In addition, the Alaska Roadless Rule will likely meet the Executive Order’s monetary criteria because it could result in more than \$100 million per year in damage to the natural resource values of the Tongass National Forest, North America’s largest temperate rain forest. The rule will have a materially adverse impact on the two largest private sectors of Southeast Alaska’s economy – tourism and commercial fishing. The rule is likely to materially adversely affect Tribal communities in Southeast Alaska that rely on Tongass roadless areas for their subsistence and identity. The rule will adversely impact the environment in a material way by removing the

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<sup>1</sup> 83 Fed. Reg. 44,252 (Aug. 30, 2018).

<sup>2</sup> See Unified Regulatory Agenda for USDA, Fall 2018, available at <https://bit.ly/2XMI9Qn> (last viewed Apr. 12, 2019).

<sup>3</sup> We understand that OIRA may have already determined that the rule constitutes a significant regulatory action. However, the Forest Service has declined to provide any documentation of such a determination.

2001 Roadless Rule’s prohibition on road construction and commercial timber harvest in large tree old growth rainforest, a dwindling and irreplaceable ecosystem. And it will raise novel legal or policy issues given the unique nature of the Tongass.

Designating the proposed Alaska Roadless Rule as a significant regulatory action will ensure that OIRA and the Forest Service comply with all applicable requirements of E.O. 12,866. In particular, it will provide OIRA the opportunity to press the Forest Service to justify or terminate the proposed rulemaking in light of the proposal’s overwhelmingly negative social and environmental costs, including its harmful impacts to Tribal communities.

## **I. LEGAL BACKGROUND: EXECUTIVE ORDER 12,866**

In 1993, President Clinton issued Executive Order 12,866 to established procedures for “Regulatory Planning and Review.” E.O. 12,866 (Sep. 30, 1993), 58 Fed. Reg. 51,735 (Oct. 4, 1993). These procedures require OIRA to review certain regulations before they can be published.

OMB’s duty to review a rule hinges in part on whether the rule constitutes a “significant regulatory action.” E.O. 12,866 defines “significant regulatory action” as

any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; ...
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

E.O. 12,866, Sec. 3(f). The determination that a rulemaking is a “significant regulatory action” triggers a number of agency duties, including the responsibility that the agency prepare a cost-benefit analysis for the rule and submit it to OIRA, which OIRA must review within 120 days. E.O. 12,866, Sec. 6(a) & (b). For those rulemakings determined to have more than \$100 million per year in impact to the economy or to “adversely affect in a material way” the environment or tribal communities, the order requires a more rigorously-defined cost-benefit analysis. E.O. 12,866, Sec. 6(a)(2)(C).

## **II. THE 2001 ROADLESS AREA CONSERVATION RULE AND THE PROPOSED ALASKA ROADLESS RULE.**

The Roadless Area Conservation Rule, adopted on January 12, 2001, limits road construction and timber harvest within the country’s last undeveloped National Forest lands. The Rule was designed to address three broad concerns. First, road construction, reconstruction, and timber harvest activities “directly threaten the[] fundamental characteristics [of roadless areas] through

the alteration of natural landscapes and fragmentation of forestlands.”<sup>4</sup> These landscapes provide pure drinking water for millions, strongholds for imperiled wildlife, and scenic, undeveloped lands in an increasingly developed nation.<sup>5</sup> Second, persistent budgetary shortfalls prevented the Forest Service from effectively managing more than a small portion of the road system, making additions costly and imprudent from a financial perspective.<sup>6</sup> Third, persistent and broad public concern with the protection of wild forests had generated substantial uncertainty and time-consuming controversy, including litigation, over roadless area management.<sup>7</sup> Although the Forest Service considered exempting the Tongass National Forest from the road building and logging bans, the agency ultimately concluded that the long term ecological benefit of protecting the Tongass outweighed any short-term socio-economic benefits.

After nearly two decades of failed legal challenges to the Roadless Rule, the State of Alaska submitted a petition last year to “exempt the Tongass National Forest” from the Rule.<sup>8</sup> In response, the Forest Service proposed in August 2018 to adopt a rule that “accommodate[s] timber harvesting and road construction/reconstruction activities that are determined to be needed for forest management, [and] economic development opportunities;” in short, to eliminate the Roadless Rule’s prohibition on both road construction and commercial logging within the Tongass National Forest.<sup>9</sup>

### **III. THE PROPOSED ALASKA ROADLESS RULE IS A SIGNIFICANT REGULATORY ACTION UNDER EXECUTIVE ORDER 12,866.**

The proposal to terminate the 2001 Roadless Rule’s protections within the Tongass National Forest meets the definition of a “regulatory action” under Executive Order 12,866.<sup>10</sup> It does so because OIRA has considered every prior federal rulemaking for the last 18 years that would alter the management of roadless national forest lands – including a prior attempt to remove the Tongass National Forest from operation of the Roadless Rule, and responses to two other state petitions – to constitute a “significant regulatory action.”

In addition, a “significant” regulatory action includes actions “likely to result in ... an annual effect on the economy of \$100 million or more or adversely effect in a material way ... jobs, the

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<sup>4</sup> Forest Service, Roadless Area Conservation Rule, 66 Fed. Reg. 3244, 3266 (Jan. 12, 2001).

<sup>5</sup> *Id.*, 66 Fed. Reg. at 3244–45.

<sup>6</sup> *Id.*, 66 Fed. Reg. at 3245–46, 3266.

<sup>7</sup> *Id.*, 66 Fed. Reg. at 3246, 3266.

<sup>8</sup> State of Alaska, Petition for USDA Rulemaking to Exempt the Tongass National Forest from Application of the Roadless Rule (Jan. 19, 2018), available at [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4406959.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4406959.pdf) (last viewed Apr. 12, 2019), attached as Ex. 1; Forest Service, Notice of Intent to Prepare an Environmental Impact Statement, 83 Fed. Reg. 44,252 (Aug. 30, 2018).

<sup>9</sup> 83 Fed. Reg. at 44,253.

<sup>10</sup> Executive Order 12,866, § 3(d) (Oct. 4, 1993).

environment, ... or tribal governments or communities.”<sup>11</sup> A “significant regulatory action” also includes a rule that may “[r]aise novel legal or policy issues arising out of legal mandates.”<sup>12</sup> The proposed Alaska Roadless Rule meets each of these criteria for significance.

**A. OIRA Has Concluded That the 2001 Roadless Rule and All Amendments to It Constituted “Significant Regulatory Action.”**

In 2001, OIRA concluded that the Roadless Rule was “a major rule, because this rule may have an annual effect of \$100 million or more on the economy or, in some sectors, may affect productivity, competition, or jobs. Consequently, the rule is subject to OMB review under E.O. 12866.”<sup>13</sup>

OIRA has deemed every subsequent attempt to amend the rule to be significant, and prepared a regulatory impact analysis on each. The George W. Bush administration adopted a rule in 2003 (later set aside by the Ninth Circuit Court of Appeals) that temporarily exempted the Tongass National Forest from operation of the national Roadless Rule.<sup>14</sup> The Forest Service stated that “because this final rule raises novel legal or policy issues arising from legal mandates or the President’s priorities, it has been designated as significant and, therefore, is subject to Office of Management and Budget (OMB) review in accordance with the principles set forth in E.O. 12866.”<sup>15</sup> The fact that OIRA concluded a prior attempt to terminate Roadless Rule protection for the Tongass is powerful precedent that should guide OIRA’s analysis of the State of Alaska’s renewed attempt to do the same.

In 2008, the George W. Bush administration adopted a rule that modified Roadless Rule protections for national forests in Idaho, pursuant to that state’s petition. OMB determined that the Idaho Roadless Rule constituted a “significant regulatory action” “due to the level of interest in roadless area management,” and prepared a regulatory impact analysis for the final rule.<sup>16</sup>

In adopting amendments to the Roadless Rule in response to a petition from the State of Colorado in 2012, the Obama administration also designated the Colorado Roadless Rule “a significant regulatory action ... under section 3(f) of Executive Order 12866, and required OIRA review.”<sup>17</sup> When a federal court in 2014 struck down a provision of the Colorado Roadless Rule

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<sup>11</sup> *Id.* § 3(f)(1).

<sup>12</sup> *Id.* § 3(f)(4).

<sup>13</sup> 66 Fed. Reg. 3244, 3267 (Jan. 12, 2001).

<sup>14</sup> *Organized Village of Kake v. United States Dep’t of Agric.*, 795 F.3d 956 (9th Cir. 2015) (*en banc*).

<sup>15</sup> 68 Fed. Reg. 75,136, 75,144 (Dec. 30, 2003).

<sup>16</sup> 73 Fed. Reg. 61,456, 61,474 (Oct. 16, 2008).

<sup>17</sup> 77 Fed. Reg. 39,576, 39,590 (July 3, 2012).

opening 20,000 acres of forest to road construction for coal mining,<sup>18</sup> the Forest Service proposed to correct the errors identified by the court and to reinstate the stricken provision. OMB determined that the proposal to reinstate the coal mine exception constituted a significant rulemaking, finding that the rule might “raise novel legal or policy issues.”<sup>19</sup>

Because OIRA has concluded every prior attempt to modify the Roadless Rule – including a proposal to eliminate roadless protection for the Tongass, responses to two prior state petitions, and a proposal to modify roadless protections on a 20,000 acre area (a tiny percentage of what is at stake on the Tongass) – it would be arbitrary and capricious for OIRA to reach a different conclusion in response to the Alaska Roadless Rule.

**B. The Alaska Roadless Rule Meets E.O. 12,866’s Definition of “Significant Regulatory Action.”**

1. The Alaska Roadless Rule Is Likely to Have an Economic Impact of More Than \$100 Million Per Year or Materially Adversely Impact a Sector of the Economy and Jobs.

The Alaska Roadless Rule’s purpose is to eliminate the ban on road construction and commercial logging across more than nine million acres of the Tongass National Forest, and to allow such activities within some or all of that roadless forest. A reasonably foreseeable impact of the rule is thus logging and road construction in areas of pristine forest, including old growth ancient forest. Such actions will cause habitat destruction, loss of hunting opportunities, stream sedimentation (and thus destruction of fish habitat), air pollution, and a loss of carbon sequestration capacity. Destruction of forests and an increase in industrial activity will also harm Southeast Alaska’s economy, which increasingly is based on recreational activities, such as tourism, tour boats, and fishing.

The Alaska Roadless Rule is thus likely to meet thresholds requiring OIRA review because it will likely have: (1) an annual economic impact of more than \$100 million per year; and (2) a material adverse effect on sectors of the economy, specifically, those associated with recreation, tourism, and subsistence.

In evaluating the monetized, economic impact of a rule, OIRA should consider both a rule’s gross costs and benefits, whether costs result from compliance with new regulation or are social costs of deregulation. In its Regulatory Impact Analysis for the 2001 Roadless Rule, the Forest

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<sup>18</sup> See *High Country Conservation Advocates v. U.S. Forest Serv.*, 52 F.Supp.3d 1174 (D. Colo. 2014) (decision on merits); *High Country Conservation Advocates v. U.S. Forest Serv.*, 67 F.Supp.3d 1262 (D. Colo. 2014) (striking down coal mine exception to Colorado Roadless Rule).

<sup>19</sup> Colorado Roadless Rule, Supplemental Final EIS (Nov. 2016) at E-56, available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd525072.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd525072.pdf) (last viewed Apr. 12, 2019). The Federal Register notice for the final coal mine exception rulemaking contains a different explanation: that “OMB determined that the regulation was economically significant.” 81 Fed. Reg. 91,811, 91,821 (Dec. 19, 2016). Whatever the rationale, OMB treated the coal mine exception rulemaking as “significant.”

Service analyzed the rule’s economic impacts to, among other values, “air and water quality, passive use, recreation, hunting and fishing, ...[and] non-timber forest products.”<sup>20</sup>

The costs of opening the Tongass’s roadless forest to road construction and commercial logging will include:

- Costs due to damage to ecosystem services, including water quality, which protects water-based recreation.<sup>21</sup> The Forest Service recognizes that “[f]orests provide a full suite of goods and services that are vital to human health and livelihood, natural assets we call ecosystem services,” and that destruction of forests can degrade the value of those valuable services.<sup>22</sup>
- Costs to “passive use” values, including existence values, which “are associated with things, places, or conditions that people value simply because they exist, without any intent or expectation of using them.”<sup>23</sup> The Forest Service concluded there is “a significant passive use value for natural areas in Alaska,” because Americans are willing “to pay more for protecting natural areas” there.<sup>24</sup>
- Costs to recreation, especially tourism, due to the destruction of scenic areas, stream pollution, damage to salmon habitat and the like from road-building and logging. A 2018 study concluded that tourism was the largest private economic sector in Southeast Alaska in terms of employment, resulting in 12 times more earnings and more than 20 times greater total employment than the timber industry.<sup>25</sup>

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<sup>20</sup> See U.S. Forest Service, *Regulatory Impact Analysis for the Roadless Area Conservation Rule* (Jan, 5, 2001) at 15, available at [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fsm8\\_035785.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsm8_035785.pdf) (last viewed Apr. 12, 2019).

<sup>21</sup> *Id.* at 17 (addressing the economic benefits of barring logging in roadless forest, including that “[t]he prohibitions of the [2001] Roadless Rule would likely maintain higher water quality in comparison to activities that would take place under the baseline. As a result, water from National Forest System lands used for municipal drinking supplies will not require increased treatment. Also, the benefits of water-based recreation will not be adversely impacted in these areas”). See also letter of S. Culliney, National Audubon Society to Secretary Perdue, USDA (Oct. 15, 2018) at 4-6 (detailing existence values), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4469835](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4469835) (last viewed Apr. 12, 2019), and attached as Ex. 2.

<sup>22</sup> U.S. Forest Service, *Ecosystem Services*, available at <https://www.fs.fed.us/ecosystemservices/> (last viewed Apr. 12, 2019), and attached as Ex. 3.

<sup>23</sup> *Regulatory Impact Analysis for the Roadless Area Conservation Rule* (2001) at 17.

<sup>24</sup> *Id.* at 18.

<sup>25</sup> Rain Coast Data, *Southeast Alaska by the Numbers 2018* (Sep. 2018), available at <http://www.raincoastdata.com/sites/default/files/Southeast%20Alaska%20by%20the%20number%202018%20updated%20Sept%202025.pdf> (last viewed April 12, 2019), and attached as Ex. 4.

- Costs attributable to the logging projects themselves, which have, for years, cost the Forest Service (and taxpayers) tens of millions of dollars more to prepare than the value of the timber. For example, a 2016 Government Accountability Office report concluded that the Tongass timber program cost taxpayers an average of \$11.4 million per year over and above the revenue from logging during the period 2005-2014; and this figure underestimates losses to taxpayers because it omits additional expenditures for road construction and maintenance associated with logging.<sup>26</sup> In 2016, a Forest Service EIS estimated those losses would continue into the future, even when the agency used estimates of the price buyers would be willing to pay for timber that were about four times higher than historical prices.<sup>27</sup>
- The social cost of carbon associated with the logging and transport of timber, and attributable to the destruction of carbon sinks, given that logging will eliminate older forests which are more effective at carbon sequestration than younger ones. In 2016, the Forest Service concluded that scientific studies infer that “past harvests and management of the [Tongass National] Forest has likely resulted in a net release of carbon to the atmosphere due in part to the practice of harvesting of old-growth timber on the Forest.”<sup>28</sup> Forest Service research scientists conclude that the Tongass may be responsible for 10%-12% of all carbon stored in the national forest system.<sup>29</sup> A 2016 report noted “the global importance of the Tongass as a carbon sink,” and concluded that logging on the Tongass proposed in a then-draft forest plan (which assumed no logging in roadless areas) “would result in a ‘social cost of carbon’ conservatively estimated at >\$100 million annually in global warming damages by

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<sup>26</sup> See Government Accountability Office, *Tongass National Forest: Forest Service's Actions Related to Its Planned Timber Program Transition*, Report GAO-16-456 (Apr. 2016) at page 7, available at <https://www.gao.gov/assets/680/676788.pdf> (last viewed Apr. 12, 2019), and attached as Ex. 5.

<sup>27</sup> See Taxpayers for Common Sense, *Cutting the Tongass Timber Plan Down to Size* (Sep. 27, 2016), available at <https://www.taxpayer.net/energy-natural-resources/cutting-tongass-timber-plan-down-to-size/> (last viewed Apr. 12, 2019), and attached as Ex. 6. See also letter of R. Alexander, Taxpayers for Common Sense to Alaska Roadless Rule (Oct. 25, 2018) at 1-2 (collecting data showing taxpayers’ losses), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4470751](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4470751) (last viewed Apr. 12, 2019), and attached as Ex. 7; letter of D. Jenkins, Conservatives for Responsible Stewardship to Secretary Perdue, USDA (Oct. 15, 2018) at 2–3 (same), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4471413](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4471413) (last viewed Apr. 12, 2019), and attached as Ex. 8.

<sup>28</sup> U.S. Forest Service, *Tongass National Forest Plan Amendment, Final Environmental Impact Statement* (June 2016) at 3-16, excerpts attached as Ex. 9; see also *id.* at 3-13 – 3-16 (discussion of carbon sequestration on the Tongass).

<sup>29</sup> M.C. Martin, *From rock to forest: Southeast’s carbon sink*, Juneau Empire (Feb. 19, 2016), available at <https://www.juneauempire.com/life/from-rock-to-forest-southeasts-carbon-sink/> (last viewed Apr. 12, 2019), and attached as Ex. 10.

the end of the century.”<sup>30</sup> The monetary value of Tongass forest as a carbon sink is demonstrated by the fact that the California Air Resources Board certified a Sealaska project to protect 165,000 acres of forest in Southeast Alaska as a carbon bank.<sup>31</sup>

These costs have the potential to reach over \$100 million per year. The Alaska Roadless Rule thus meets the significance threshold of E.O. 12,866.

Even if those annual costs do not exceed \$100 million, opening old growth roadless forests in the Tongass to road construction and commercial logging will cause material adverse effects to the tourism industry in Southeast Alaska. As noted, the tourism industry is the leading employer in the region. That industry relies on the pristine nature of undisturbed roadless lands which draws cruise ship visitors, anglers, hunters, and wildlife viewers from across the globe. Allowing road construction and commercial logging within some or all of the Tongass’s remaining roadless areas threatens to materially damage that tourism industry, as numerous business owners have warned.

Fore example, Hunter McIntosh, President of The Boat Company, a “small cruise vessel eco-tour operator,” stated in comments opposing the Alaska Roadless Rule:

The visitor products industry is the largest, growing private sector economy in the region and requires guided public access to unroaded and intact or recovering forest ecosystems in remote areas. The Roadless Rule ensures a supply of these areas to meet growing market demand for visitor products and is the most sensible ecological and economic policy for 21st century southeast Alaska. Every small cruise operator and sport fishing guide commenting on this proposal to date supports the [2001] Roadless Rule.

However, the Forest Service now proposes to undo this fiscally responsible, pro-business policy.... The supply of inventoried roadless areas provides a significant comparative advantage to the 21st century southeast Alaska economy relative to other destinations. Demand is high, and there is a shrinking supply of undeveloped areas for outdoor adventure....

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<sup>30</sup> D. DellaSala, Geos Institute, *The Tongass Rainforest as Alaska’s First Line of Climate Change Defense and Importance to the Paris Climate Change Agreements* (2016), available at <https://forestlegacies.org/images/projects/tongass-report-emissions-2016-01.pdf> (last viewed Apr. 12, 2019) at 1-2, and attached as Ex. 11.

<sup>31</sup> Sealaska, *Sealaska Will Protect Thousands of Acres of Forest in the Tongass for Over 110 Years* (Mar. 27, 2018), available at <https://sealaska.com/news/item/2018-03-27/sealaska-will-protect-thousands-acres-forest-tongass-over-110-years> (last viewed Apr. 12, 2019) and attached as Ex. 12.

Any measure that reduces Roadless Rule restrictions on timber harvest and road construction activities is likely to displace the guided public and associated business activity.<sup>32</sup>

A CEO and owner of a large Southeast Alaska cruise ship business opposing changes to the 2001 Roadless Rule made similar points:

Undeveloped, unroaded, pristine places are an essential part of Southeast Alaska's globally-recognized tourism brand. Demand for recreation and tourism in the Tongass National Forest is increasing. Roadless areas protect recreation resources that are scarce both nationally and worldwide....

UnCruise Adventures is concerned about maintaining the recreation values of the areas we actively use. These values include solitude from other users, undeveloped scenery, intact ecosystems, healthy fish and wildlife, and permitted access and tr[ai]ls.<sup>33</sup>

Keegan McCarthy, a Juneau resident and owner of three businesses – a big game hunting guiding operation permitted in the Tongass, a small ship cruise operation conducting sightseeing/fishing charters, and a seiner/crab vessel operating in Southeast Alaska – paints a stark picture of economic damage the Alaska Roadless Rule could cause:

I have upwards of \$5m invested in my business. Money invested assuming I would have a realistic opportunity to continue to run a business that operates in pristine environments. My clients do not come to see clear cuts and roads. They do not like to hike old logging roads, they can all notice the difference as we pass the devastated areas on Kuiu and Kupreanof where logging has occurred. My hunters, the most conservative pro development group in the world[,] all come to see the last remaining virgin forest in America and comment on it's beauty and are thankful they have a place left to hunt. To risk destroying this directly puts businesses like mine in jeopardy, leaving me no way to pay my debts and provide for my family and my employees.<sup>34</sup>

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<sup>32</sup> Letter of H. McIntosh, The Boat Company to C. French, U.S. Forest Service (Oct. 2018) at 1–2 (citation omitted), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4471128](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4471128) (last viewed Apr. 12, 2019) and attached as Ex. 13.

<sup>33</sup> Letter of Capt. D. Blanchard, Owner & CEO, UnCruise Adventures to S. Perdue, USDA Secretary (Oct. 15, 2018) at 2, 3, available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4469945](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4469945) (last viewed Apr. 12, 2019) and attached as Ex. 14.

<sup>34</sup> Letter of K. McCarthy, Master Guide, Coastal Alaska (Oct. 14, 2018) at 1, available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4453013&project=54511](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4453013&project=54511) (last viewed Apr. 12, 2019) and attached as Ex. 15.

Other businesspeople operating in Southeast Alaska raised similar concerns.<sup>35</sup>

Further, logging and road construction will materially adversely affect the commercial fishing industry, the second-most-important economic sector in Southeast Alaska. The Sitka-based Alaska Longline Fishermen’s Association, whose members “participate in halibut and sablefish longline fisheries and in all southeast Alaska commercial salmon fisheries,” requested that the Forest Service “cease planning” on the proposed Alaska Roadless Rule because of the potential for significant, damaging impacts on the businesses it represents.

Recent declines in salmon fishery outputs have resulted in serious risks to the economic viability of commercial fishermen throughout southeast Alaska. Any development that threatens the recovery of these fish – or worse, further diminishes the population – risks long-term adverse impacts on southeast Alaska fisheries. Salmon populations have diminished throughout the species’ range because of high levels of development in freshwater habitat throughout the west Pacific coast of North America. There are numerous scientific studies linking those declines in salmon productivity to logging road density and large scale

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<sup>35</sup> See letter of R. Burke, Bluewater Adventures (Sep. 10, 2018) (author who has operated “nature cruises in Southeast Alaska since 1993” on permit with U.S. Forest Service supports retaining Roadless Rule to protect brown bear habitat that customers come to see) available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4415066&project=54511](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4415066&project=54511) (last viewed Apr. 12, 2019) and attached as Ex. 16; letter of G. Schlachter, Expedition Broker (Oct. 15, 2018) (fly fisher guide, and broker to over 40 yachts and small ships opposing Alaska Roadless Rule because watersheds at risk under the proposal “support our sport and commercial fisheries and tourism industries that make up ¼ of Southeast Alaska’s jobs and contribute over \$2 billion to our regional economy annually”), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4454372&project=54511](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4454372&project=54511) (last viewed Apr. 12, 2019) and attached as Ex. 17; letter of B. Janes, Gastineau Guiding Co. (Oct. 15, 2018) (23-year tour operator at Mendenhall Glacier Recreation Area stating that tourists visit the area to experience “untouched, undeveloped” wilderness that roadless areas provide) available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4454848&project=54511](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4454848&project=54511) (last viewed Apr. 12, 2019) and attached as Ex. 18; letter of A. Decker, Glacier Guides, Inc. (Oct. 15, 2018) (president of family-run, yacht-based hunting and fishing guiding company asserting that opening roadless areas to logging and road construction will disrupt hunting and put small outfitter operations out of business), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4454394&project=54511](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4454394&project=54511) (last viewed Apr. 12, 2019) and attached as Ex. 19; letter of C. Smith, Northwest Navigation (Oct. 12, 2018) (VP of small cruise ship tour business in Southeast Alaska stating that existing Roadless Rule “helps my business and other marine-based businesses like mine grow and expand,” and that “I see increased road building as a detriment to growth in tourism to Alaska”), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4448885&project=54511](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4448885&project=54511) (last viewed Apr. 12, 2019) and attached as Ex. 20.

clearcutting. Because southeast Alaska supports one of the largest remaining sustainable fisheries, it is critical to maintain the remaining intact habitat in order to provide stability to the regional economy....

The impacts of losing additional spawning and rearing habitat in southeast Alaska aquatic ecosystems are substantial given current population vulnerabilities. Further declines in salmon productivity may result in prolonged periods of fishery closures, risking the viability of hundreds of Alaska resident-owned small fishing businesses, southeast Alaska salmon processors, and the communities and support businesses that rely on the salmon economy.<sup>36</sup>

In sum, because the Alaska Roadless Rule will likely have an annual effect on the economy of \$100 million or more, and will adversely affect in a material way the economy of Southeast Alaska, particularly the important tourism and fisheries sectors, OIRA should conclude that the proposed rule constitutes a “significant regulatory action” per E.O. 12,866.

2. The Alaska Roadless Rule Is Likely to Adversely Affect in a Material Way Tribal Governments or Communities.

The proposed rule is likely to materially adversely affect Tribal communities in Southeast Alaska that rely on Tongass roadless areas for subsistence, clean water, and their way of life. At least two such communities have stated their opposition to the Alaska Roadless Rule for these reasons.

The Organized Village of Saxman, a federally-recognized tribe in Southeast Alaska, adopted a resolution in October 2018 recognizing that roadless areas of the Tongass have been in the care of their people for millennia and “not only provide Alaska Native people with food, they essentially define who we are and where we come from.”<sup>37</sup> The resolution discusses the “serious and long-lasting Tribal implications from any reduction in current Roadless Rule protections,” “strongly supports lasting protection for all inventoried roadless areas within the Tongass National Forest as provided in the [2001] Roadless Rule,” and states that the only change to the Roadless Rule that the Village can support is the inclusion of an additional 350,000 acres to the lands protected by the 2001 Roadless Rule.<sup>38</sup> Two other federally-recognized Southeast Alaska

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<sup>36</sup> Letter of L. Behnken, Alaska Longline Fishermen’s Ass’n to C. French, U.S. Forest Service (Oct. 14, 2018), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4470508](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4470508) (last viewed Apr. 12, 2019) and attached as Ex. 21.

<sup>37</sup> Organized Village of Saxman, Resolution #2018-10-223 (Oct. 11, 2018), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4470750](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4470750) (last viewed Apr. 12, 2019) and attached as Ex. 22.

<sup>38</sup> *Id.* at 4.

Tribes, the Organized Village of Kake and Craig Tribal Association, also enacted resolutions strongly supporting lasting protection for all inventoried roadless areas on the Tongass.<sup>39</sup>

3. The Alaska Roadless Rule Is Likely to Adversely Affect in a Material Way the Environment.

Opening Tongass National Forest roadless lands to road construction and logging is likely to have significant adverse effects on the environment, largely because roadless areas of the Tongass shelter much of the remaining biodiversity-rich, large-tree old growth temperate rainforest in North America. Because of their value as lumber, large trees are the very type likely to be targeted for logging should the Alaska Roadless Rule be approved. Once these forests are cut down, they are unlikely to be restored for centuries.

The Forest Service has noted the importance and fragility of the Tongass National Forest's old growth and the roadless areas that protect it, and the damage to biodiversity posed by opening these roadless forests to logging:

The majority of species in the ecoregion are old-growth dependent or disturbance sensitive species, and the majority of habitat and strongholds supporting these species exists on NFS [National Forest Service] lands. Because the majority of lands in Southeast Alaska outside the Tongass have been intensively managed for timber harvest, the Tongass plays a critical role in conserving the biodiversity in Southeast Alaska and the Northern Pacific Coast ecoregion.<sup>40</sup>

The 2000 Final EIS evaluating the impacts of the 2001 Roadless Rule concluded that exempting the Tongass from that Rule (as the Alaska Roadless Rule would do) would, “[o]ver the long term..., when considering the reasonably foreseeable increase in habitat fragmentation and loss of connectivity in adjacent landscapes, pose a higher risk of adverse cumulative effects to biodiversity.”<sup>41</sup> In evaluating the 2001 Roadless Rule's protections for the Tongass, the agency also acknowledged:

the forest's high degree of overall ecosystem health is due to its largely undeveloped nature including the quantity and quality of inventoried roadless areas and other special designated areas. Alternatives that would immediately

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<sup>39</sup> Organized Village of Kake, Resolution No. 2018-04 (Oct. 10, 2018), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4479232](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4479232) (last viewed Apr. 12, 2019) and attached as Ex. 23; Craig Tribal Association, Resolution 2018-037 (2018), available at [https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3\\_4469884](https://cara.ecosystem-management.org/Public/DownloadCommentFile?dmdId=FSPLT3_4469884) (last viewed Apr. 12, 2019), and attached as Ex. 24.

<sup>40</sup> U.S. Forest Service, Roadless Area Conservation Rule, Final EIS (2000) at 3-390. *See also* letter of S. Culliney, National Audubon Society (Ex. 2) at 1-4 (describing values of large tree old growth and the threat posed by the Alaska Roadless Rule to such forests).

<sup>41</sup> U.S. Forest Service, Roadless Area Conservation Rule, Final EIS (2000) at 3-389.

prohibit new road construction and timber harvest in all inventoried roadless areas would most effectively protect those values. Other alternatives that exempt, delay, or limit the application of the prohibitions would offer less protection.<sup>42</sup>

In its 2001 rulemaking, the Forest Service ultimately rejected leaving Tongass roadless areas open to logging and road construction because of the “long-term ecological benefits to the nation of conserving these inventoried roadless areas,” benefits that would be lost if the Alaska Roadless Rule is adopted.<sup>43</sup>

This site-specific conclusion is supported by many Forest Service and other scientific studies that have long found that road construction and logging in unroaded, forested landscapes has a plethora of damaging environmental impacts, because such actions: fragment habitat; render lands near roads inhospitable as habitat; cause erosion and sedimentation in streams; lead to the spread of exotic weeds and pollutants from tailpipes; increase the risk of poaching, roadkill, and human-caused wildfire ignition; and can result in degradation and looting of cultural sites, among other impacts.<sup>44</sup>

The Alaska Roadless Rule thus meets the significance threshold per E.O. 12,866 because it is likely to materially adversely affect the environment.

#### 4. The Alaska Roadless Rule Is Likely to Raise Novel Legal or Policy.

The Forest Service has repeatedly recognized and emphasized the unique nature of the Tongass National Forest in the agency’s rulemakings on roadless areas, and continues to do so, demonstrating the novel policy issues at play in the proposed Alaska Roadless Rule. The Tongass is the largest national forest, the largest landscape of temperate rainforest in the National Forest System, has a higher percentage of roadless acres (over 90 percent) than nearly any other national forest outside of Alaska, shelters unique endemic wildlife, and plays a critically important role in the local economy and in the culture of indigenous communities.<sup>45</sup> The Tongass comprises 80% of Southeast Alaska according to the Forest Service.<sup>46</sup>

In preparing the 2001 Roadless Rule, the Forest Service treated the Tongass differently from all other National Forests, initially considering exempting the Tongass altogether, and then

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<sup>42</sup> 66 Fed. Reg. at 3,254 (Jan. 12, 2001).

<sup>43</sup> 66 Fed. Reg. at 3,255 (Jan. 12, 2001). *See also id.* at 3,254, 3,266 (“Allowing road construction and reconstruction on the Tongass National Forest to continue unabated would risk the loss of important roadless area values.”).

<sup>44</sup> *See, e.g.*, U.S. Forest Service, Roadless Area Conservation Rule, Final EIS (2000); U.S. Forest Service, *Forest Roads: A Synthesis of Scientific Information* (June 2000), available at [https://www.fs.fed.us/eng/road\\_mgt/science.pdf](https://www.fs.fed.us/eng/road_mgt/science.pdf) (last viewed Mar. 12, 2019).

<sup>45</sup> *See* 83 Fed. Reg. 44,252, 44,252–53 (Aug. 30, 2018); U.S. Forest Service, Roadless Area Conservation Rule, Final EIS (2000) at 1-16 – 1-17 (noting unique timber management legal regime).

<sup>46</sup> 68 Fed. Reg. at 75,139 (Dec. 30, 2003).

analyzing several alternatives with different management regimes for that one forest.<sup>47</sup> The preamble to the Roadless Rule acknowledges the Tongass’s “unique and sensitive ecological character,”<sup>48</sup> and explains that proposals for certain timber sales would be allowed to proceed, unlike for all other forests, “because of the unique social and economic conditions where a disproportionate share of the impacts are experienced throughout the entire Southeast Alaska region and concentrated most heavily in a few communities.”<sup>49</sup>

In 2003, the Bush administration proposed to reverse course and to exempt the Tongass from the 2001 Roadless Rule’s protections. The notice of proposed rulemaking stated that the “*unique situation* of the Tongass National Forest has been recognized throughout the Forest Service’s process for examining prohibitions in inventoried roadless areas.”<sup>50</sup> In finalizing the 2003 Tongass rulemaking, the Bush administration specifically concluded that the rule “raises novel legal or policy issues arising from legal mandates or the President’s priorities,” and so designated the rulemaking as significant and thus subject to OIRA review per E.O. 12866.<sup>51</sup> The rule’s preamble underscores that the “unique situation of the Tongass has been recognized throughout the Forest Service’s process for examining prohibitions in inventoried roadless areas.”<sup>52</sup> Again, it would be arbitrary for OIRA to conclude now that a similar proposal to terminate the Roadless Rule’s protection raises no such novel issues.

In its 2018 Notice of Intent to prepare an EIS on the Alaska Roadless Rule, the Forest Service asserted of the proposal’s purpose and need:

A long-term, durable approach to roadless area management is needed that accommodates the *unique* biological, social and economic situation in and around the Tongass National Forest.<sup>53</sup>

Further, the State of Alaska’s petition seeks, and the Forest Service’s rulemaking will consider, exempting the Tongass from the 2001 Roadless Rule, which would place the Tongass in the novel position of being the only national forest without rules protecting roadless areas.<sup>54</sup>

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<sup>47</sup> 66 Fed. Reg. at 3,262 (Jan. 12, 2001) (stating that one of the two key decisions the Forest Service sought to answer with the Roadless Rule was “whether the proposed national prohibitions should be applied to the Tongass National Forest or modified to meet the *unique* situation on the Tongass.” (emphasis added)). *See also* 68 Fed. Reg. 75,136, 75,139 (Dec. 30, 2003).

<sup>48</sup> 66 Fed. Reg. at 3,254 (Jan. 12, 2001). *See also id.* (characterizing the Tongass’s ecological values as “extraordinary”).

<sup>49</sup> *Id.* at 3,255, 3,266.

<sup>50</sup> 68 Fed. Reg. 41,865, 41,867 (July 15, 2003) (emphasis added).

<sup>51</sup> 68 Fed. Reg. 75,136, 75,144 (Dec. 30, 2003). *See supra* at 4.

<sup>52</sup> 68 Fed. Reg. at 75,144 (Dec. 30, 2003).

<sup>53</sup> 83 Fed. Reg. 44,252 (Aug. 30, 2018).

<sup>54</sup> State of Alaska Petition (Ex. 1).

#### IV. CONCLUSION.

For the reasons stated above, we urge OIRA to conclude that the Alaska Roadless rulemaking is a significant regulatory action, one that must comply with the requirements for such actions pursuant to Executive Order 12,866.

Thank you for your attention to this matter. We look forward to your reply, and will contact you shortly to arrange a call to discuss this issue. Feel free to reach Mr. Zukoski at 303-641-3149 or via email at [tzukoski@biologicaldiversity.org](mailto:tzukoski@biologicaldiversity.org).

Sincerely,



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Cc: Richard Theroux, Acting Branch Chief, Natural Resources and Environment Branch,  
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Ken Tu, Regional Administrative Review Coordinator, U.S. Forest Service  
([kktu@fs.fed.us](mailto:kktu@fs.fed.us))

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THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Department of Natural Resources

COMMISSIONER'S OFFICE

550 W 7<sup>th</sup> #1400  
Anchorage, AK 99501  
Main: 907.269.8431  
Fax: 907.269.8918

January 19, 2018

U.S. Department of Agriculture  
Attention Sonny Perdue, Secretary of Agriculture  
1400 Independence Avenue, S.W.  
Washington, DC 20250

Dear Secretary Perdue,

Enclosed you will find a request from the State of Alaska to consider a petition for rulemaking on the applicability of the 2001 Roadless Rule to the Tongass National Forest in Alaska. The history of the exemption and the ensuing legal challenges are covered in detail in our petition and exhibits. The State also lays out clear and sound rationale for why an exemption should be addressed through the rulemaking process.

The State appreciates your interest in this topic. We see this as one of many significant opportunities to work with you to support a diverse and robust forest products sector in Southeast Alaska. Rebuilding this sector will create jobs and prosperity for our rural communities located in the Tongass National Forest.

The State looks forward to participating in the process and is available to answer questions you or your staff may have on this subject.

Sincerely,

A handwritten signature in black ink that reads "Andrew Mack".

Andrew T. Mack  
Commissioner

cc:

Bill Walker, Governor of Alaska  
U.S. Senator Lisa Murkowski, Chairman, Senate Energy & Natural Resources Committee  
U.S. Senator Daniel S. Sullivan  
U.S. Representative Don Young  
Tony Tooke, Chief USFS  
Cathy Giessel, State Senator and Chair Senate Resources Committee  
Geran Tarr, State Representative and Co-chair House Resources Committee  
Andy Josephson, State Representative and Co-chair House Resources Committee

Before the Department of Agriculture  
Washington, DC 20250

To: George Ervin "Sonny" Perdue, Secretary of Agriculture

From: The State of Alaska, Department of Natural Resources

Re: The Department of Agriculture Roadless Area Conservation Rule and  
The 2016 Tongass National Forest Land and Resource Management Plan

Date: January 19, 2018

**STATE OF ALASKA  
PETITION FOR USDA RULEMAKING TO EXEMPT THE  
TONGASS NATIONAL FOREST FROM APPLICATION OF  
THE ROADLESS RULE AND OTHER ACTIONS**

**I. SUMMARY**

In a 2003 Record of Decision (ROD) Ex. 1, the USDA promulgated a regulation (Tongass Exemption) exempting the Tongass National Forest (Tongass) from the Roadless Area Conservation Rule (Roadless Rule). In this ROD, the USDA provided in-depth analysis of the requirements and limitations of the Tongass Timber Reform Act (TTRA) and the Alaska National Interest Lands Conservation Act (ANILCA) if the Roadless Rule were applied to the Tongass. After this statutory analysis, the USDA concluded that the best way to implement the spirit and the letter of these laws was to exempt the Tongass from the Roadless Rule.

The USDA also concluded that exempting the Tongass was consistent not only with the intent of Congress, but also with sound management of the Tongass because roadless areas in the Tongass are adequately protected without adding the additional restrictions in the Roadless Rule. USDA stated that roadless areas are common, not rare in the Tongass and the vast majority of the 9.34 million acres of roadless areas have restrictions on road building and timber harvest irrespective of the Roadless Rule. Even without the Roadless Rule, only about four percent of the Tongass is designated as suitable for timber harvest. *See* ROD, Ex. 1.

In its decision to exempt the Tongass, USDA weighed the value of imposing these unnecessary additional restrictions against the very significant social and economic costs to Southeast Alaska that were discussed in depth in the 2001 Roadless Rule decisional documents. When USDA reconsidered the same facts in this second rulemaking that it had considered in 2001, the USDA this time concluded that the needs of the people of

Alaska outweighed adding more restrictions when roadless areas in the Tongass are adequately protected without the Roadless Rule.

After environmental interest groups challenged the Tongass Exemption in 2009, the USDA aggressively defended the rule in its 2010 opening brief in the Federal District Court for the District of Alaska. *See* USDA Brief Ex. 2. USDA argued that “the Tongass Exemption was a well-reasoned decision, supported by the evidence” and that after reweighing the same economic, social and environmental factors considered in the 2001 ROD, USDA concluded that “the roadless values on the Tongass could be protected and social and economic impacts minimized by exempting the Tongass from the Roadless Rule. USDA Brief at 1-4.

The District Court nevertheless invalidated the Tongass Exemption, but upon appeal, a three-judge panel of the Ninth Circuit Court of Appeals reversed and upheld the Exemption. However, in a 6-5 *en banc* decision, the Ninth Circuit struck down the Tongass Exemption on a procedural ruling, holding that the USDA failed to adequately explain its change of position from the 2001 Roadless Rule to the 2003 Tongass Exemption. *See En Banc* Opinion, Ex.3. The Court did not find any substantive legal infirmities with the Tongass Exemption, that is, the Court did not hold that the USDA analysis or rationale could not support exempting the Tongass, or that the USDA reached the wrong decision, but only that USDA failed to provide an adequate explanation of its change of position from 2001. No judge questioned the fact that the USDA had a right to change position on exempting the Tongass, if the change was adequately explained. *Id.*

The rationale USDA provided for exempting the Tongass in the 2003 ROD and again in the 2010 USDA Brief remains valid today. The extensive damage resulting from the application of the Roadless Rule to the economic and social fabric of Southeast Alaska remains as real today as it was 15 years ago, while the Tongass roadless values remain more than adequately protected without the Roadless Rule. Therefore, for the reasons more fully explained below, the State of Alaska (State) respectfully requests that the Secretary of Agriculture grant this petition and direct the USDA and USFS to immediately undertake a rulemaking to consider once again exempting the Tongass from the Roadless Rule.

In addition, the State requests that the Secretary also direct the USFS to undertake a revision to the 2016 Tongass Land & Resource Management Plan (TLMP). In a recent amendment to the TLMP, the USFS implemented the Roadless Rule by including many of the most restrictive provisions and prohibitions of the Roadless Rule into the fabric of the TLMP. As a result, even if the Tongass is once again exempted from the Roadless Rule, these Roadless provisions would remain in the TLMP and be independently applicable unless also removed from the TLMP. A Forest Plan amendment or revision under the 2012 USFS planning rules is the mechanism for the Executive Branch to

remove these provisions. The State also requests that the provisions inserted into the TLMP in 2016 requiring a rapid transition from old growth to young growth timber harvest also be revised.

## II. HISTORY OF THE TONGASS EXEMPTION

Controversy over federal management of the Tongass goes back many decades. The most relevant history regarding whether to exempt the Tongass from the Roadless Rule begins at the turn of the 21st Century in the waning days of the Clinton Administration. Entire books have been written on the high-profile policy and legal battles over the Tongass spanning many decades, and the basic facts have been set forth in many legal briefs and judicial decisions. *See e.g.* USDA Brief Ex.2 at 1-5; State Brief in the Federal District Court for the District of Columbia (State Roadless Rule Brief), Ex. 4 at 1-3; and *State of Alaska v. USDA*, case 11-1122 RLJ, Opinion filed 9/20/17, Ex. 5 at 7-15. Therefore, only a very brief summary is presented here in addition to the more comprehensive discussions in the attached exhibits.

Beginning with an interim rule in 1999, as the USDA developed the Roadless Rule, the administration's preferred approach was to exempt the Tongass or to limit its application. USDA Brief, Ex. 2 at 1-2. It was not until the final decision in the 2001 ROD, at the very conclusion of the rulemaking process, that USDA unexpectedly fully and immediately applied the Roadless Rule to the Tongass. *Id.*

During the rulemaking process, USDA recognized that the Tongass would be so uniquely and severely impacted by the Roadless Rule that what was effectively a separate rulemaking within a rulemaking was conducted for the Tongass. USDA recognized that the Roadless Rule would severely interfere with seeking to meet timber demand as required by Tongass Timber Reform Act, that the social and economic impact on Southeast Alaska would be severe, and that adequate protections were in place to protect the environmental values of the Tongass without the Roadless Rule. *Id.* at 2-5. These were the rationale stated throughout the process for choosing limited, if any, application to the Tongass as the USDA preferred alternative; at least until the surprise ending when in the final ROD the Roadless Rule was made immediately fully applicable to the Tongass. *Id.* For example, the USDA preferred alternative in the draft environmental impact statement was "Tongass exempt". *Id.*

Many lawsuits immediately followed promulgation of the Roadless Rule, including one by the State of Alaska challenging its application to Alaska national forests. In 2003, a temporary rule exempting the Tongass (Tongass Exemption) was promulgated to satisfy a settlement of Roadless Rule litigation between USDA and the State of Alaska. It is this temporary rule that was invalidated by the Federal District Court in Alaska in 2011. The rulemaking to promulgate permanent exemptions for both

national forests in Alaska – also a term of the settlement agreement – was never commenced after the 2005 State Petitions Rule replaced and effectively (at least temporarily) repealed the Roadless Rule nationwide. *Id.*

However, a federal court in California invalidated the State Petitions rule in 2006 and reinstated the Roadless Rule nationwide even though it had been invalidated by a federal court in Wyoming and was enjoined nationwide. The reinstatement of the Roadless Rule was, however, explicitly made subject to the Tongass Exemption rule, and therefore the Tongass remained exempt until the District Court in Alaska invalidated it in 2011. *Id.*

The Tongass Exemption rule then remained in litigation until the United States Supreme Court on March 29, 2016 declined the State's Petition for Certiorari for review of the Ninth Circuit *en banc* decision invalidating the Tongass Exemption rule due to the argued inadequate explanation of USDA's change in policy.

Following the loss of the Tongass Exemption, the State and many supporting intervenors continue to appeal the Roadless Rule and the Roadless Rulemaking decision to apply the rule to the two national forests in Alaska in the United States Court of Appeals for the District of Columbia Circuit. If the Court rules in the favor of the State, three different remedies are possible depending upon which claim(s) the case is decided; the Roadless Rule could be invalidated nationwide, it could be invalidated as applied to Alaska or it could be invalidated solely as applied to the Tongass.

### **III. CONTINUING RATIONALE FOR EXEMPTING THE TONGASS**

#### **A. Good Policy**

Rationales for exempting the Tongass from the Roadless Rule in a new USDA rulemaking are not entirely equivalent to Alaska's legal claims and arguments challenging the Roadless Rule in federal court. The most important difference is that USDA can enact or change policy via a rulemaking whether such action is legally mandated or just good policy as determined by the agency. The *en banc* decision of the Ninth Circuit striking down the Tongass Exemption did not in any way cast doubt on USDA's authority to set policy on the Roadless or on the Tongass other than to clarify the extent to which the agency must explain its rationale in the record of decision. *See En Banc Opinion Ex. 3.*

Therefore, the first and most compelling reason that USDA should grant this petition to undertake a rulemaking to restore an exemption for the Tongass is that it remains good policy. The 2010 USDA brief (Ex. 2) supporting the policy decision to exempt the Tongass remains as persuasive today as it was then. No federal court has

opined that there was any issue with the policy choice to exempt the Tongass, but instead ruled only on the procedural flaw of not including a sufficient explanation for the change in policy from the 2001 ROD. The State is therefore requesting that USDA now correct this procedural problem through a new rulemaking and in effect reinstate the Tongass Exemption based on the same sound policy decision it made in 2003. All of the rationales that USDA offered for exempting the Tongass in the 2003 ROD remain valid today. ROD Ex. 1.

## **B. Compliance with Federal Law**

In 2003, USDA offered rationales for exempting the Tongass as policy decisions that the State contends are legal requirements that mandate a Tongass or Alaska exemption. In particular, this includes compliance with ANILCA and the TTRA.

USDA devoted a considerable portion of the 2003 ROD to discussion of these two statutes and ultimately stated that the Tongass Exemption Rule

“reflects the Department’s assessment of how to best implement the letter and spirit of congressional direction along with public values, in light of the abundance of roadless values on the Tongass, the protection of the roadless values already included in the Tongass Forest Plan, and the socioeconomic costs to the local communities of applying the roadless rule’s prohibitions.” Ex. 1 at 75142.

USDA further stated that ANILCA and the TTRA “provide important congressional determinations, findings, and information relating to management of National Forest System lands on the Tongass.” *Id.*

More specifically, USDA explained that in ANILCA Congress set aside another 5.5 million acres of the Tongass wilderness and found that this additional wilderness set aside represents “a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition” and that no additional conservation areas will be needed in the future on the Tongass. *Id.* Congress attempted to prevent the Executive Branch from circumventing this directive by prohibiting “future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska” without the approval of Congress. 16 U.S.C. §3213(a).

There is a fine line between the USDA’s statement in the 2003 ROD that the Tongass Exemption implements “the letter and spirit of congressional direction” and the State’s legal argument in the current litigation that by failing to exempt the Tongass from the Roadless Rule USDA has violated ANILCA by withdrawing millions of acres from

more intensive use without the consent of Congress. State Roadless Rule Brief, Ex.4 at 43-44. USDA may view exempting the Tongass as policy to implement the letter and the spirit of congressional direction in ANILCA or as a legal mandate to comply with ANILCA. Either way, complying with congressional intent as set forth in ANILCA is a powerful rationale for a new rulemaking to restore the Tongass Exemption.

The TTRA presents a similar rationale for a new rulemaking. In 1990, Congress amended ANILCA with the TTRA, which included a directive to the USDA Secretary to “seek to provide a supply of timber from the Tongass National Forest, which (1) meets the annual market demand for timber and (2) meets the market demand for timber for each planning cycle” consistent with multiple use and sustained yield management and the requirements of the National Forest Management Act. ROD, Ex.1 at 75142. USDA analyzed the demand numbers for the Tongass timber and the effect of the road construction and timber harvest prohibitions of the Roadless Rule and concluded that “the roadless prohibitions operate as an unnecessary and complicating factor limiting where timber harvesting may occur.” *Id.* at 75141.

The State fully concurs with the USDA policy decision that further timber harvest restrictions were not necessary and complicated compliance with the TTRA directive to seek to meet timber demand. However, as with ANILCA, the State continues to argue in federal court that the timber harvest and road construction restrictions of the Roadless Rule limit the ability of the Tongass Forest Supervisor to plan and execute timber sales to the extent that it is impossible to even seek to meet timber demand. Intentionally tying your own agency’s hands with such unnecessary restrictions that ensure failure to meet timber demands is a violation of the TTRA provisions to seek to meet demand. The State’s full argument why the TTRA legally mandates a Tongass Exemption from the Roadless Rule is presented in the State Roadless Rule Brief, Ex. 4 at 38-43.

As with ANILCA, in 2003 USDA viewed an exemption as policy to implement the letter and the spirit of TTRA while the State determined that TTRA legally mandates an exemption. But again, implementing the directive of Congress is a powerful rationale for a new rulemaking under either analysis.

### **C. Compelling Case for Exemption Rulemaking**

Addressing the serious socioeconomic consequences to Alaskans and complying with ANILCA and TTRA are all compelling rationale for a Tongass Exemption today, as they were in 2003. Other rationales offered by USDA in the 2003 ROD and supported by counsel in the 2010 USDA brief also remain valid today. As noted above, the Ninth Circuit did not invalidate the Tongass Exemption due to flawed rationales, but rather only because of an inadequate explanation for the change in policy. The State respectfully

submits this petition for a rulemaking to exempt the Tongass from the Roadless Rule in the interest of the socioeconomic well-being of its residents.

#### **IV. CONTENT OF REQUESTED RULE**

The Tongass Exemption Rule that was invalidated by the Ninth Circuit was a single sentence under 36 CFR § 294.14. The invalidated language in CFR § 294.14 can be replaced by new similar language as simple as: “This subpart does not apply to the Tongass National Forest.”

#### **V. OTHER REQUESTED ACTION**

In 2016, the USFS completed an extensive amendment process to the TLMP. Among the changes that were made to the TLMP, significant changes included the implementation of the Roadless Rule and the implementation of the Transition Strategy intended to rapidly shift timber harvest in the Tongass from primarily old-growth to young-growth timber. The State was among many objectors to this TLMP amendment based on a wide range of procedural issues and substantive issues in forestry, transportation and resource development. The State’s August 30, 2016 formal objection to the 2016 TLMP amendment is attached as Exhibit F. The exhibits filed with the objection can be accessed on the USFS Tongass website at:

<https://cloudvault.usda.gov/index.php/s/l6my9KpoJk90wUa>.

The State’s objections did not result in changes to the final TLMP.

In addition to requesting that USDA commence a rulemaking to exempt the Tongass from the Roadless Rule, the State also requests that the USDA Secretary direct the USFS to commence a new amendment or revision process for the TLMP as amended in 2016. The State asks that this new TLMP process reconsider all of the objections in the State’s objection letter in Exhibit 6. However, section III “The Amended Forest Plan violates the TTRA and ANILCA” is of particular relevance to this petition. Ex. 6 at 6.

This section explains that the Roadless Rule violates both the TTRA and ANILCA as is also discussed above. *Id.* It also explains that in adopting this TLMP amendment “USFS now compounds this violation of federal law by selecting an alternative that not only fully implements the Roadless Rule in the management plan governing the Tongass, but also implements a transition plan to young-growth timber with a rapid phase out of the old-growth timber on which the timber industry is dependent.” *Id.*

As a result of implementing the Roadless Rule restrictions in the TLMP, along with additional restrictions on old-growth timber harvest outside of roadless areas, a new

Tongass Exemption rule alone will not provide relief to Southeast Alaska. The Roadless Rule and the 2016 TLMP now each independently restrict road construction and timber harvest to such a degree as to have devastating socioeconomic effects on Alaskans. A more complete discussion of the effects of the TLMP on Alaska and the reasons why the TLMP violates TTRA and ANILCA are set forth in Exhibit 6.

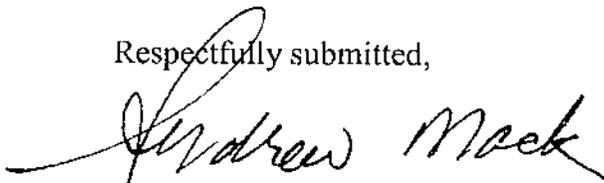
## VI. CONCLUSION

Beginning in 2003, USDA has recognized that roadless values in the Tongass are well protected without the Roadless Rule. USDA has also recognized that the prohibitions on road construction and timber harvest in the Roadless Rule come with severe socioeconomic consequences to Alaskans that outweigh any value of adding unnecessary restrictions to those already in place. With this understanding, USDA exempted the Tongass from the Roadless Rule from 2003 until 2011 when a federal court invalidated the Exemption based on a procedural flaw in the 2003 ROD. During this court battle, USDA fully defended USDA's above stated rationale for the exemption.

Subsequent to the court imposing the Roadless Rule on the Tongass, the situation has only been compounded by the USFS's incorporation of the restrictions on roadbuilding and timber harvest into the TLMP. Therefore, both an exemption rulemaking and a TLMP plan revision or amendment are now necessary to reinstate USDA's policy of Tongass exemption set forth in the 2003 ROD.

For the reasons set forth above, the State of Alaska respectfully requests that this petition for rulemaking be granted and that the USDA promptly commences a rulemaking proposing a rule to permanently exempt the Tongass National Forest from application of the Roadless Rule. The State also requests that the Secretary of Agriculture direct the USFS to commence a TLMP revision or amendment to remove provisions of the Roadless Rule that have been incorporated into the plan and to reconsider the State objections set forth in Ex. 6 that were not addressed in the final TLMP.

Respectfully submitted,



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